

# Post-Retirement Employment

## Background

PERS 1 retirees are currently subject to specific rules for post-retirement employment that do not apply to TRS 1 retirees. PERS 1 retirees seeking to return to work for 1,500 hours are subject to a 90-day waiting period. Also, these employees are subject to a 1,900-hour cumulative or "lifetime" limit on the number of hours that may be worked beyond 867 annually. Once the 1,900-hour limit is reached, PERS 1 retirees may work up to 867 hours in subsequent calendar years before their benefits are suspended. PERS 1 retirees are also subject to an amended definition of "separation of service" such that any written or verbal agreement to return to work with the same employer nullifies the separation and creates a potential violation of the statute entitled "Penalties for False Statements." Further, employers are subject to certain record-keeping requirements when they hire these retirees to work for 1,500 hours, including documentation of the need to hire the retirees and records of the actual hiring process.

## Committee Activity

### Presentations:

June 15, 2004 - Executive Committee  
July 13, 2004 - Full Committee  
September 7, 2004 - Executive Committee  
October 19, 2004 - Full Committee

### Proposal:

October 19, 2004 - Full Committee

## Recommendation to Legislature

Add the same general hiring qualifications to TRS 1 retirees as currently exist for PERS 1 retirees who seek to work in excess of 867 hours annually (except that the TRS 1 waiting period is 45 days instead of 90 days). Require both PERS 1 and TRS 1 employers to hire retirees pursuant to a written policy. Create a new cumulative total limit of 3,165 hours worked in excess of 867 for both plans (from no cumulative total in TRS and from a 1,900 cumulative total in PERS 1). Expand the contractual right in PERS 1 from 525 hours to 867 hours per year.

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# Select Committee on Pension Policy

## Post-Retirement Employment

*(October 6, 2004)*

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### **Issue**

This report is intended to supplement the in-depth report on this issue made to the Select Committee on Pension Policy in December 2003. This report will recap the issue in a simplified way, then discuss some of the more sensitive aspects of post-retirement employment. Post-retirement employment is a controversial subject, not only within the state of Washington but throughout the entire country. This paper will explore some of the difficult policy questions that arise in connection with this issue, as well as some of the legal constraints and technicalities that are applicable. It will also touch on some of the trends that are pressuring policy makers to continue to address the issue of post-retirement employment.

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### **Members Impacted**

Recent legislative activity has focused on Plan 1 of the Teachers' Retirement System (TRS 1) and Plan 1 of the Public Employees' Retirement System (PERS 1). As of the most recent actuarial valuation (2002), there were 12,456 active members and 33,148 retirees in TRS 1. There were 21,737 active members and 54,006 retirees in PERS 1.

### Current Situation

Generally, all retired members of PERS and TRS have a **waiting period** before they may return to employment. In most instances, the waiting period is thirty (30) days. If retirees return to work prior to completion of the waiting period, their benefits are effectively suspended due to mandatory reductions in the benefit amounts (5.5% for every eight hours worked during that month to a maximum of 160 hours in PERS, and 5.5% for every seven hours worked during the month to a maximum of 140 hours in TRS).

The PERS and TRS systems allow retirees to return to employment, but there are limits on the number of hours that may be worked without suspension of retirement benefits. The **hour limits** start over with each new calendar year and vary among the plans. Generally, for the Plans 2/3 the hour limit is 867 hours. For the Plans 1, retirees may work up to a limit of 1,500 hours without suspension of their pension benefits, however they are subject to limits on their **contractual** rights to return to work of 5 months in PERS 1 and 525 hours in TRS 1.

PERS 1 retirees are subject to more specific rules affecting waiting periods and hour limits. Those seeking to return to work for 1,500 hours are subject to a 90-day waiting period. Also, these employees are subject to a 1900-hour cumulative or “lifetime” limit on the number of hours that may be worked beyond 867 hours annually. Once the 1,900 hour limit is reached, PERS 1 retirees may work up to 867 hours in subsequent calendar years before their benefits are suspended. PERS 1 retirees are also subject to an amended definition of “separation from service” so that any written or verbal agreement to return to work with the same employer nullifies the separation and creates a potential violation of the statute entitled “Penalties for False Statements,” RCW 41.40.55. Further, employers are subject to certain record-keeping requirements when they hire these retirees to work for 1,500 hours, including documentation of the need to hire the retirees and records of the actual hiring process.

### Simplified History

The door to post-retirement employment was first opened in the mid-1960's. Since then, there have been numerous changes to the pertinent plan provisions, most of which involved the length of the waiting period and the

limits on the numbers of hours that may be worked before retirement benefits are suspended. A complete history is found in the December 2003 Post-Retirement Employment Report to the SCPP that is included with this report.

In 2001 Washington State pension law was changed to expand post-retirement employment opportunities for members of TRS 1 and PERS 1. The hour limits for these plans were increased to 1,500. The earlier limits had been 5 months for PERS 1; in TRS 1 the limits had been 525 hours for substitute teachers, 630 for substitute administrators and 840 for substitute teachers or principals in school districts with documented labor shortages. The new limits under the 2001 law translated to nine months in PERS 1 and a complete school year for TRS 1.

The 2001 law called for the Office of the State Actuary to study the fiscal and policy impacts of the act. If the State Actuary determined that the expansion of post-retirement employment options resulted in increased costs for the state retirement funds, the Actuary would propose a process to charge the employers for the costs incurred. The Select Committee on Pension Policy heard its first report in 2003. At its meeting on December 16, 2003, the SCPP decided to defer action until further data and study was available, as there was an insufficient amount of experience data to determine the cost.

Further legislative changes involving post-retirement employment occurred in 2003, and these changes only affected members of PERS 1. The changes were applicable to those PERS 1 retirees seeking to work up to the new limit of 1,500 hours, and they are described above under "Current Situation." Similar changes had been proposed in 2003 for TRS 1 but were vetoed. During the 2004 legislative session HB 2640 was introduced to reinstate most of the TRS 1 restrictions that had been vetoed by the Governor in 2003. This bill died in House Appropriations.

### **Fiscal Impact of 2001 Legislation: Indeterminable at This Time**

One of the keys to determining cost is experience data. Typically actuaries study retirement plan experience every 5 to 6 years and adjust long-term retirement assumptions based on actual retirement experience.

Generally, post-retirement employment provisions generate a cost to the retirement system when they cause a significant increase in the number of retirements over what is assumed under normal long-term plan experience.

The 2001 legislation that expanded post-retirement employment opportunities for members of PERS 1 and TRS 1 included a study mandate directing the State Actuary to determine whether new provisions have resulted in increased costs for the state retirement funds, and if so, to propose a process to charge those employers who employ retirees pursuant to the new provisions.

As indicated in the Post-Retirement Employment Report dated November 24, 2003, there was an insufficient amount of experience data to reach a reliable conclusion on the question of cost at that point in time. At its December 16, 2003 meeting, the Select Committee decided to defer action until further data and study is available. As of the date of this report, the Office of the State Actuary has collected a total of nine quarters (2.25 years) of data. A minimum of five years of experience data is needed.

### **Current Data**

While additional data has been gathered since the December 16, 2003 meeting, this data appears to be largely consistent with what had been gathered before. Again, the preliminary nature of the data should be emphasized. Nine quarters of data is not sufficient to reliably establish whether new employment trends or retirement patterns have been created as the result of the 2001 and 2003 legislation. For examples of the types of data that are being collected, see pages 13-17 of the December 2003 Report.

### **Policy Analysis**

The following discussions were not highlighted in the December 2003 report. They include a review of policy and plan design issues, legal issues and trends.

Post-retirement employment is one of the most controversial issues that public pension policy-makers face. The controversy arises when the retired employee is allowed to draw a retirement benefit while earning a salary, and in some instances, while accruing another benefit. There are at least **two philosophies of post-retirement employment:**

- 1) "They earned it and the benefit is paid for, so why not?"
- 2) "If it's not restricted, it leads to double dipping and abuse."

Proponents of the first view tend to be those who favor a **service-based** retirement plan. Service-based retirement is not tied to age but to the number of years served. The philosophy is that once a public employee has reached a certain number of years of service, that employee should be able to retire regardless of how old the employee is. These plans may be funded based on the assumption that members will retire when they first become eligible, which may result in higher contribution rates. Average retirement ages for these kinds of plans will be slightly younger than for aged-based plans. Having retirees return to work without suspension of the pension benefit may not be considered objectionable because there is confidence that the retiree's pension has already been paid for.

Proponents of the second view tend to favor **age-based plans**. They prefer to avoid situations that involve the re-employment of public employees who have already retired, and often seek to retain workers in the system until they reach what is deemed to be an appropriate normal retirement age. Age-based plans tend to provide mechanisms for members to continue to accrue benefits for working more years and later in life. Such plans may even discourage or penalize those who seek to retire early. Proponents of the second view may seek to forbid post-retirement employment altogether unless the retirement benefit is suspended. Under the second view, if post-retirement employment is allowed, it may be restricted to part-time by imposing hour limits or earnings tests that trigger suspension of the retirement benefit.

### **A. Plan Design in PERS and TRS**

There are significant differences in plan design between the TRS and PERS Plans 1 and the Plans 2/3. Generally speaking, the retirement provisions for the Plans 1 are more service-based, while the retirement provisions for the Plans 2/3 are more age-based.

Plan 1 retirees have a benefit formula that restricts benefit accruals after 30 years. Eligible Plan 1 retirees receive 2% of average final compensation (AFC) for each year of service credit to a maximum of 60% of AFC. There is less incentive for Plan 1 members to continue to work once they have reached thirty years of service. Furthermore, there are no early retirement provisions in TRS and PERS Plans 1, nor are there any reductions for retiring at earlier ages. Members are eligible for normal retirement at age 60 with five years of service, age 55 with 25 years of service, or at any age with 30 years of service. The plan design does not focus on or encourage working until age 65 and beyond.

Because retirement in the Plans 1 is more service-based, members tend to retire at earlier ages. Those who retire at earlier ages are more likely to seek opportunities to return to work. If they have already retired, they will prefer plan provisions that allow working **after** retirement, such as the post-retirement employment provisions that have been implemented for the Plans 1.

In contrast to the Plans 1, the Plans 2 have no cap on AFC. Members receive 2% of AFC for each year of service for as long as they continue to work. Thus a member who continues to work after qualifying for normal retirement will continue to accrue a significant increase in the monthly retirement benefit for working past age 65. In the Plans 2, members are eligible for normal retirement at age 65 with five years of service. The Plans 2 have provisions for early retirement, but the benefits are significantly reduced when members retire early. In summary, Plan 2 members are rewarded for working past age 65 by accruing additional benefits, while their benefits will be significantly reduced for retiring early. Plan provisions are aimed more at **retaining** older workers so they will retire later.

Similarly, in the defined benefit component of the Plans 3 there is no cap on the average final compensation. Eligible retirees receive 1% of AFC for each year of service, regardless of how long they work. Normal retirement is at age 65 with 10 years of service, and benefits are significantly reduced for retiring early. The vesting period is 5 years for those who complete 12 service credit months after attaining age 54. With respect to the defined contribution component, there is immediate vesting. Generally, under the Plans 3, members will accrue greater benefits by working until age 65 or longer.

**B. *Legal/Technical Issues Arising in Connection with Post-Retirement Employment***

Policy makers who adopt post-retirement employment provisions for their plans that allow re-employed retirees to draw their retirement allowances while earning a salary and/or accruing additional benefits are faced with certain legal issues that arise in connection with the practice. They may also be challenged with public relations issues if there is any perception of potential or actual abuse.

1. Prohibition Against In-Service Distributions

A tax issue may arise in the context of retirees who return to work, especially those who return to the same position or to the same employer. Federal tax law prohibits qualified plans from distributing retirement income to members who are still “in service.” This rule is known as “prohibition against in-service distributions,” and is the genesis of the requirement that each employee have a bona fide termination of employment and actually retire prior to receiving a pension. Theoretically, a retirement plan can lose its qualified status under Section 401(a) of the Internal Revenue Code for violating this rule, resulting in significant tax liabilities for employers and employees.

The resolution of whether there is a true separation from service is to be based upon all the facts and circumstances in each individual case. There is no IRS guidance on what constitutes a sufficient “waiting period” between retirement and post-retirement employment. This is because the waiting period is only one of many facts relevant to the issue of whether the recipient of the retirement allowance has actually retired.

An employer and employee may violate the federal rule even when a statutory waiting period has been observed. For example, the employee may leave employment pursuant to a preexisting agreement that the employer will hire the employee back shortly after expiration of the waiting period. In such an instance, the rule would be violated. While a statutory waiting period can eliminate some compliance problems, it is not determinative of whether there has been a bona fide termination of employment.

DRS data for the last nine quarters shows that for both PERS 1 and TRS 1, roughly 70% of retirees are returning to work with the same employer. Thus, there is an increased possibility of violating this federal rule within the Plans 1. In Washington, only PERS 1 members are subject to a potential penalty for having a written or oral agreement that would negate a bona fide separation from service. Such an agreement could theoretically be prosecuted as a gross misdemeanor. As of the writing of this report, there does not appear to be any record of a successful prosecution under this provision.



Another approach to enforcement would be to adopt a model similar to that used by the California Public Employees' Retirement System (CalPERS). The CalPERS statute authorizes the retirement board to establish the criteria under which a bona fide separation from service is satisfied. If there is a failure to satisfy the criteria, the retired member is required to reimburse the retirement system for any retirement allowance received during the period of violation; pay the contributions that would have been required for the period, plus interest; and contribute toward reimbursement of the retirement system for administrative expenses incurred in responding to the violation, to the extent the member is determined to be at fault. Violations are handled as administrative, not criminal matters.

2. Inconsistencies in Statutory Framework

A technicality that creates inconsistencies in post-retirement employment practices has to do with membership eligibility. Generally, a retiree who becomes re-employed in an "eligible position" becomes subject to the post-retirement employment restrictions of that retirement system. Membership eligibility is a threshold determination, and in most cases, determining eligibility in the various retirement systems is a straightforward matter. When a person is working in a position that is membership-eligible, the person is reported by the employer to the Department of Retirement Systems. Pension benefits will be suspended when a retiree who is re-employed in an eligible position reaches the applicable hour limits.

Ineligible positions may include not only part time positions, but also certain full time public positions that are covered under another retirement system. Retirees may work as many hours as they want in this latter category without affecting their retirement allowances. For example, the **higher education institutions** are authorized by RCW 28B.10.400 to make separate retirement income plans available to their professional and academic employees instead of PERS or TRS. These institutions determine who is eligible to participate in their higher education retirement plans. An example is found in WAC 415-108-710, which provides that a PERS retiree may work after retirement and

continue to receive a retirement allowance if the member becomes an active member of a higher education retirement plan and is employed no sooner than one calendar month after the member's retirement benefit accrues.

This distinction may be seen by some as a legal "loophole." The practice was recently highlighted in the media as illustrated in the attached transcript entitled "Tripple dipping at UW," May 24, 2004, which may be found at [www.king5.com](http://www.king5.com) (scroll down to Local News then King 5 Investigators). The story incorrectly attributed the retire-rehire activity at UW to "a 2001 state law."

The return-to-work legislation that was passed in 2001 did not create the ability for the employees identified in this media account to return to work without suspension of their retirement benefits. Instead, that ability is the result of the long-standing provisions in state law allowing higher education institutions to sponsor their own retirement plans and to promulgate their own rules determining who is eligible to participate in the plans. It is the statutory flexibility given to higher education plans that enables these re-employed retirees to begin accruing benefits in the higher education retirement plan while still receiving their pensions.

The operation of the estoppel statute further highlights this inconsistency with respect to post-retirement employment. **Estoppel** is an archaic term that simply means "stopped," "blocked" or "not allowed." It is derived from a doctrine of law that prevents a party from taking a certain action because it is not fair or just. Washington's retirement law includes a general estoppel rule related to post-retirement employment that was passed in 1976.

RCW 41.04.270 prohibits any member or former member from becoming a member or establishing any contractual rights in another public retirement system listed in RCW 41.50.030 (DRS-administered plans) or first class city systems if:

- the person is retired or eligible to retire (under normal, early and alternate early retirement provisions) from a public retirement system; or
- the person receives a disability allowance from a public retirement system.

The estoppel rule also provides that persons receiving a benefit or who are eligible to receive a benefit are not subject to the provisions of the statute if the person accumulated less than 15 years of service.

The higher education plan is not covered by this estoppel rule. The estoppel rule is found in the “General Provisions” of Chapter 41.04, RCW, and is not applicable to the higher education plan, which is found in Chapter 28B.10, RCW. By its terms, the estoppel rule is only applicable to DRS-administered plans and the city employee retirement systems of Seattle, Tacoma and Spokane. This means, for example, that a PERS 1 retiree who is rehired and becomes an active member of a higher education plan is not prohibited by the estoppel rule from earning additional benefits while drawing a PERS 1 retirement allowance.

### 3. Contractual Rights

A third area of legal concern to policy makers adopting post-retirement employment provisions into their retirement plans is the issue of vested or contractual rights. Expanding the opportunity to engage in post-retirement employment may be seen as an expanded benefit. As a general matter, once a new retirement benefit has been granted, it cannot be withdrawn without violating the principle set forth in Bakenhus v. City of Seattle, the Washington Supreme Court case that established pension provisions as an integral portion of the contemplated compensation set forth in the contract of employment.

The 2001 legislation that expanded the number of hours PERS and TRS Plan 1 retirees could work before having their benefits suspended included language to limit the affected employees’ ability to rely on the expansion as part of their

employment contract. The legislation included a “no contractual right” clause. This clause stated that the legislature reserved the right to amend or repeal the provision. The clause further provided that no member or beneficiary of PERS 1 has a contractual right to be employed more than five months in a calendar year without a reduction of his or her pension, and no TRS 1 member or beneficiary has a contractual right to be employed more than 525 hours per year without a reduction of his or her pension. The ability of the legislature to restrict employee reliance upon legislation expanding pension benefits by utilizing a “no contractual right” clause has not yet been tested in the Washington courts.

There are at least two approaches that may be used when lawmakers wish to provide a benefit that may be subsequently taken away. One is to use the “no contractual right” clause. The advantage is that employees are notified up front that they cannot rely on the newly created benefit. The disadvantages of this approach include legal uncertainty and a risk of litigation. In addition, by creating benefits with an uncertain legal status, there is the possibility of violating the federal tax rule requiring that benefits be “definitely determinable,” another plan qualification requirement of federal tax law.

An alternative approach is to create temporary pension rights, specifying a window of time within which the rights would be available and then expire. This approach has the advantage of being more certain, but a disadvantage is the need for the legislation to be amended or renewed over time. This approach also creates questions of equity, in that not all members have the opportunity to take advantage of the expanded benefit. Some members will fall within the window and some will not.

A recent U.S. Supreme Court case that was decided in June of this year is worthy of being mentioned, as it reiterates the point that currently accrued benefits must not be affected when post-retirement employment opportunities are expanded and then reduced. The case involved a private

plan rather than a public pension plan, and was decided under the “anti-cutback rule” of ERISA (Employee Retirement Income Security Act). ERISA is not applicable to governmental plans. The case is relevant, however, because ERISA cases may be used as persuasive authority in public pension cases when there is no public pension plan law that is directly on point. The anti-cutback rule is the private sector equivalent of Washington’s Bakenhus rule.

The case of Central Laborers’ Pension Fund v. Heinz, et al. involved a plan amendment that expanded the kinds of disqualifying employment that would trigger a suspension of benefit payments. In this case, the contested plan amendment was made subsequent to the early retirement of two participants. The court found that the retirees had justifiably relied on the terms of the plan at the time they retired, and that the subsequent plan amendment had effectively reduced their benefits. The Supreme Court cited as support Treasury regulations under Internal Revenue Code Section 411(d)(6) that flatly prohibit plans from attaching new limiting conditions to benefits that an employee has already earned.

### **C. *Comparison with Other Retirement Systems***

Many states have adopted a waiting period for post-retirement employment in order to minimize the possibility of making in-service distributions in violation of plan qualification guidelines. Ohio has a two-month waiting period, Colorado and Florida have a one-month waiting period, and Minnesota’s waiting period is 14 days. Not all retirement systems adopt a specific waiting period. For example, California PERS’ statute simply requires that there be a bona fide separation in service. A proposed administrative rule is pending that would require a 60-day waiting period.

The following table contains a more general description of post-retirement employment restrictions in other comparative retirement systems. Compared to the provisions in other states, Washington’s post-retirement employment rules are not atypical.

<b>Rehire Provisions from Select Comparison Systems</b>	
<b>State / System</b>	<b>Post-Retirement Employment Restrictions</b>
<b>CalPERS</b>	May work 960 hours; some positions without restriction
<b>CalSTERS</b>	May earn a maximum of \$25,740
<b>Colorado PERA</b>	May work 110 days or 720 hours; some positions without restriction
<b>Florida (FRS)</b>	May work 780 hours; some positions without restriction
<b>Idaho PERSI</b>	May work less than 20 hours/week or 5 consecutive months; less than one-half contract for teachers
<b>Iowa PERS</b>	Ages 55-65 may earn greater of \$30,000 or current SS limit; no limit after 65
<b>Minnesota SRS</b>	Under 65 may earn up to \$11,280 as indexed by SSA; no limit after 65.
<b>Missouri (MOSERS)</b>	May earn additional service credit but pension is suspended; some positions without restriction
<b>Ohio PERS</b>	Retiree becomes a contributing member; some positions are without restriction
<b>Ohio STERS</b>	Retiree becomes a contributing member and may receive contributions as a lump sum or an annuity
<b>Oregon</b>	May work 1,039 hours; no restriction for those over age 70; some positions without restriction
<b>Seattle</b>	May work 1,040 hours

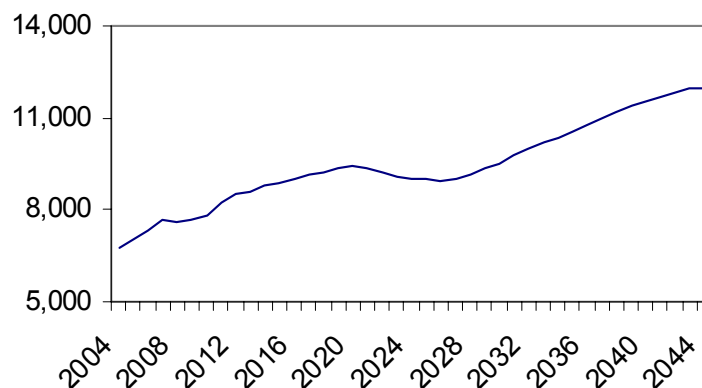
Within this comparison, some states allow retired members to return to work up to a maximum number of hours without having their pension suspended; others allow a member to earn a maximum dollar amount. Some allow members to return to work full time upon suspension of the retirement benefit, and contributions to the retirement system are required during the period of post-retirement employment. Some states have eliminated restrictions for older retirees. Most states have more liberal post-retirement employment provisions for teachers than for other public employees. In fact, according to National Council on Teacher Retirement, all 50 states allow some form of post-retirement employment for teachers.

**D. Economic, Demographic and/or Social trends**

Washington's 2001 legislation that expanded post-retirement employment opportunities was largely in response to a shortage of experienced teachers and other employees that were in high demand during the most expansive point in the last business cycle. The following discussion is intended to highlight some of the current trends that continue to create pressure on policy makers as they address the issue of post-retirement employment. This is not to suggest that policy makers must respond to such pressures, or that there is a right or wrong way to respond. The purpose of this section is simply to highlight some of the developments that continue to bring the issue of post-retirement employment to the forefront.

In the State of Washington, the total number of retirements for all public employee retirement systems is projected to steadily increase over the next forty years. The following chart shows the projected retirements from active status based on data from the 2002 Actuarial Valuation:

**Figure 4**  
**Projected Retirements, All Systems**



This steady projection does not portend a massive looming labor shortage in the government workforce. However there is some concern that imminent baby boomer retirements will create a shortage of experienced workers.

The Washington Department of Personnel's Task Force on the Impact of Aging Trends on the Washington State Government Workforce (June 2000) found the following:

- The state will experience significantly higher turnover due to increasing retirement rates, with some agencies and job categories impacted to a much greater extent than others.
- In 18 agencies, including some of the state's largest, 15-29% of the PERS Plan 1 workforce will be eligible to retire by 2005.
- More than 50% of executive level and 30% of mid-level managers will be eligible to retire by 2005.
- Over 50% of the state workforce is in the 40-54 age group and at the mid-career stage or more.

The 2000 Task Force had several recommendations that are relevant to the issue of post-retirement employment and the relatively recent expansion or post-retirement employment opportunities in the State of Washington:

- Hire retirees as a source of experienced workers.
- Eliminate barriers to using retirees as part-time workers by reducing restrictions on post-retirement employment and/or allowing exceptions so that agencies can provide health care coverage as an incentive for retirees to work part-time.
- Explore options to help retain experienced workers, such as scheduling flexibility, telecommuting, assignment or career changes, leave options and downshifting.

Whether older workers retire and return to work, or whether they are given incentives to remain within the workforce, the trend in Washington and throughout the country is toward an aging workforce. Both public and private employers are concerned with sector shortages that may result from an increase in the retirement



rate for baby boomers, and are looking for ways to keep experienced workers involved. See Adequacy of Retirement Benefit Report to the SCPP, June 2004.

Employees are also indicating a desire to work longer. Among 2,001 workers between the ages of 50 and 70 recently polled by AARP, nearly 70% said they planned to continue working past the age of 65, and almost half said they envisioned working into their 70s or beyond. Pre-retirees cited various reasons for believing they will continue to work, including needing money (22%), needing health benefits (17%), staying mentally active (15%), being productive or useful (14%), and remaining physically active (9%).

The changing workforce is further reflected in changes to the federal Social Security law as of January 2000 that eliminated the Retirement Earnings Test for individuals age 65-69. (It remains in effect for those ages 62-64). This test had required that if seniors continued to work from age 65 to 70, their benefits were reduced \$1 for every \$3 earned above \$17,000. The withheld benefits were then returned, in general with interest, in the form of higher benefits after stopping work, or at age 70.

The test was not eliminated because older Americans aren't working. Rather, the law eliminating the test - the Senior Citizens' Freedom to Work Act of 2000 - was touted as "an important step toward preparing the economy for the demographic challenge of the baby boom." At that time there were 9.6 million people between the ages of 65 and 69, of which 3.0 million were working in Social Security covered employment. The number of people in that age group was projected to double to 20.3 million by the year 2030. National Economic Council, April 6, 2000.

Finally, a recent Watson Wyatt study of workers at or near retirement age indicated that a majority of survey participants would like to work fewer hours later in their careers, but less than half of them expect their employer to offer this opportunity. When asked how they would like to phase into retirement, many older workers said they hope to work part-time (63%) or work more flexible hours (48%) before retiring completely. Nearly 2/3 (63%) of current workers aged 50 and older indicated that they would like to phase into an entirely different career. Among those currently

participating in phased retirement, 80% work flexible hours and 79% work part-time. Two-thirds (67%) have less responsibility in their current job compared with their career job. See “Older Workers Would Delay Retirement if Employers Offered Phasing,” Watson Wyatt Press Release, March 22, 2004.

***E. Challenges in Responding to Trends***

Most retirement experts agree that the aging workforce is a trend that is causing some to question how retirement plans and benefits programs are structured. The challenge for policy makers is to distinguish short-term cycles from long-term trends.

Public pension plans are designed and funded over multiple decades. Frequent changes in the benefit structure of public pension plans can contribute to contribution rate instability and inadequacy, as well as possible generational inequities in terms of taxpayer funding. Also, because of well-established legal principles recognizing the contractual nature of pension benefits, it is virtually impossible to take away benefits once they have been given. Even if benefit reductions are prospective and apply only to new hires, there is political difficulty in offering less to new employees than what has been previously offered.

Part of the philosophical debate surrounding post-retirement employment practices is whether retirement systems should be used as a tool in solving personnel issues. Proponents argue that retirement benefits are part of the total compensation package and should be used to address the needs of a changing workforce. Opponents argue that compensation issues should be addressed directly through salary increases, and retirement systems should be utilized only for retirement, i.e. providing security to employees who are no longer working.

**F. Public Relations Issues**

As one of the more controversial issues for public pension systems, “retire-rehire” has received considerable attention in the press. Washington is no exception. Washington’s expanded post-retirement employment opportunities have been the subject of analysis in Governing Magazine (July 2003). They have been highlighted in numerous newspaper articles and editorials, including those published by the Olympian (September 9, 2002 and August 1, 2004), Seattle Times (January 30, 2003 and February 1, 2002), the News Tribune (April 21, 2003), the Columbian (September 26, 2002), and the Daily of the University of Washington (May 7, 2004). They have also been the subject of a King5 Investigative Report (May 24, 2004, transcript attached). Managing public relations is another one of the many challenges for policy makers who tackle the controversial issue of post-retirement employment.

**G. Conclusion to Policy Analysis**

Retire/rehire provisions are used to attract retired workers back to the work force **after retirement**. They tend to be used with plans that have service-based retirement provisions as in the Plans 1 for TRS and PERS. Washington recently expanded opportunities for PERS and TRS Plan 1 retirees to return to work, and the State Actuary is monitoring the impacts of this legislation. Another category of tools is used to **retain** older workers who are still in the workforce. These types of provisions may involve increased benefit accruals for those working longer periods of years and later in life. Some of these kinds of provisions are already built into the Plans 2/3 of the Washington State Retirement Systems.

**Executive Committee Recommendation**

On September 7, 2004, the Executive Committee recommended that the attached bill draft be forwarded to the full committee for consideration. This draft was recommended by a subgroup headed by Representative Bill Fromhold. The subgroup considered five draft bills, and decided to recommend this version (“Draft E”) for consideration by the Executive Committee and full SCPP.

### **Bill (Draft)**

The bill draft is attached. It adds the same general hiring qualifications to TRS 1 as currently exist for PERS 1 retirees who seek to work in excess of 867 hours annually. Those include a prohibition of any written or verbal agreement to return to work with the same employer. Under the legislation, a TRS 1 separation from service that is pursuant to such an agreement would be nullified and would constitute a potential misdemeanor violation of the statute entitled "Penalties for False Statements." Further, TRS 1 employers are subject to certain record-keeping requirements when they hire these retirees, including documentation of the need to hire the retirees and records of the actual hiring process. The language for these requirements largely tracks that of the existing PERS 1 statute.

The proposed draft also requires both PERS and TRS Plan 1 employers to hire retirees pursuant to a written policy. In the proposed legislation, the length of separation requirement (between retirement and re-employment) for working beyond 867 hours is specified for TRS 1 as 45 days (rather than the 90 days already in effect for PERS 1.) Also, this bill creates a new cumulative limit of 3165 hours worked over 867 for both plans (from no cumulative total limit in TRS 1 and from a 1900-hour cumulative total limit in PERS 1). The new cumulative limit starts anew as of the effective date of the bill, which is January 1, 2006. Finally, the contractual right to post-retirement employment in TRS 1 is expanded from 525 hours per year to 867 hours.

### **Fiscal Note (Draft)**

The draft fiscal note is attached.

### **Administrative Impacts**

The Department of Retirement System (DRS) was asked to comment on potential administrative impacts of the proposed legislation on September 17, 2004. Comments were given by telephone on September 27, 2004:

- This bill will create new tracking requirements for the Teachers' Retirement System Plan 1.
- The bill is not expected to generate a significant administrative impact, and it will achieve some consistency between TRS 1 and PERS 1.
- There will be a significant communications impact in that the changes will need to be communicated to affected members.



## Investigators: Triple dipping at UW

09:11 AM PDT on Tuesday, May 25, 2004

By CHRIS INGALLS / KING 5 News



KING

They are some of the highest paid administrators at the University of Washington, and they've found a way to earn even more money. In some cases, much more.

It's legal, but is it right?

Earlier this year, the KING 5 Investigators reported on public school administrators accused of double dipping, earning their pensions and a salary at the same time.

After that story aired viewers' tips led us to the University of Washington and the phenomenon that critics call "triple dipping:" collecting their pensions, a salary and accumulating new retirement benefits, too.

### Keeping the expertise

U.W. researcher Steven Domonkos has been retired for two years now, but still comes to the lab almost every day.

Domonkos designs and builds sophisticated instruments to measure atmospheric conditions.

It's highly specialized field, so replacing Domonkos might have been impossible if not for a law that allowed U.W. to rehire him while he continued to earn his retirement benefit.

"I've been around here for 34 years. I know the place. I know the people," he said.

There's not much question that the University benefits from having Domonkos around. He's part time and his salary is just \$26,000 a year.

But the law that allowed him to return has been used dozens of times by some of the U.W.'s highest paid administrators.

### Retirement and \$318,000 a year

Among them is Edward Lightfoot, the University's information systems director, who earns a \$100,000 annual retirement benefit.

A month after retirement in 2001, he was hired back into the same \$218,000 a year job.

Total earnings now: \$318,000 a year.

Vice Provost Steven Olswang retired in 2002, earning a \$63,000 benefit.

But he was back on the Tacoma campus in a month, making \$174,000 a year.

Total annual earnings, \$237,000.

**A 'cozy relationship'**

State Sen. Karen Fraser, who helped write the law as a way to address a shortage of K-12 teachers, was surprised to learn of the trend.

"It looks like a huge salary increase rather than a retirement," she said

Fraser said she never imagined that university administrators, who share the same retirement plan, could benefit.

"It looks like a cozy relationship between people who are very well paid," she said.

The KING 5 Investigators have obtained the records of 52 U.W. administrators who retired after the new law took effect in 2001 and were immediately rehired, usually into the same job.

There was no competition for their job openings until Fraser authored a law in 2003 that now requires vacancies to be advertised and retirees to sit out three months before applying for their old job.

All of the rehired administrators the KING 5 Investigators looked at were are part of an old state retirement plan. After 30 years of contributions, their benefits stop growing. Many saw the new retirement policy as the best way to keep building their nest egg.

But why does the U.W. have far more retire/rehire administrators than any other large university in the state?

**Spreading the word at U.W.**

A spokesman admits the university spread the word and told administrators about the new retirement law.

"If you're implying that somehow the University shouldn't have made this information available, I think I would disagree with that," said U.W. spokesman Norm Arkans.

"The advantage to the university is that people could get the benefit to which they're entitled for all their years of hard work and we could keep their expertise here," he said.

Sen. Frazier says the University violated the intent of the law by offering it to people who may have had no intention of retiring anytime soon.

"The spirit of the law was to be a tool of last resort, and they apparently said 'if you're eligible, let's do it'," she said.

KING 5 Investigators contacted most of the 52 rehired administrators. Only two agreed to talk on camera, but many made the same point. This problem wouldn't exist if the legislature wrote the law clearly in the first place.

The University of Washington says the practice does not cost taxpayers any more money because it would have to hire someone and pay them a pension benefit as well.

But that argument doesn't fly if you assume that some of these people wouldn't have retired, if the university didn't prompt them.

K through 12 retirees are limited in the number of years they can return to work and they can't earn an additional retirement benefit.

But those rules don't apply at the University of Washington where administrators can join a new retirement plan and earn an additional retirement benefit at the same time they're receiving one from the state.

Fraser says that's unfair to all other state employees.

"I think because of the equities issue, the legislature will be addressing this next session," said Fraser.

### THE ADMINISTRATORS

The following is a list provided by the University of Washington of those administrators who retired and were rehired within a matter of months, in most cases to the same job. Their monthly salary is also indicated:

Online at:

Kenneth Anderson, \$13,333	Mary Melanson, \$9,398
John S. Armstrong, \$4,236	Jane Meredith, \$5,585
Coralie Baker, \$3,656	Linda Milgrom, \$4,246
Edward Belcher, (separated)	Bruce F. Miller, \$5,267
Brian Boyle, \$5,000	Kou-Ying Moravan, \$7,824
Michael Bryant, \$11,282	Terry Nyman, \$2,550
Frank Davis, \$7,450	Steven G. Olswang, \$14,490
Steven Domonkos, \$2,210	Carl Osaki, \$3,173
Nancy Dosmann, \$4,295	Michael R. Peterson, \$5,436
Christian J. Eggen, \$9,018	Michael Pingree, \$16,115
Pamela Forbrush, \$3,060	Darcy Pollom, \$5,610
Loretta Geotsch, \$4,580	Carolyn Rasch, 4,424 (separated)
Arlene K. Hamilton, \$4,321	Michael G. Reagan, \$3,037
Dannis Hasko, \$2,550	Helen Remick, \$8,364
John H. Haukaas, \$3,994	William Rogers, \$3,313
Thomas Johnson, (separated)	Sharrie W. Shade, \$6,440
Sandra Kroupa, \$4,501	Richard F. Simmons, \$3,415
Carl Larson, \$2,237	Sharyl G. Smith, \$4,119
Diane Leigh, \$4,590	Daniel Stearns, \$5,021
Laurie B. Levy, \$6,739	Virginia Stimpson, \$4,842
Edward Lightfoot, \$18,165	Bruce Vik, \$6,508
Nancy L. Lin, \$2,802	John Watkins, \$4,292
Daniel Lotz, \$6,042	Gary Whisler, separated
Augustine McCaffery, \$4,539	Anita A. Whitney, \$9,834
Colleen McKay, \$5,520	Susan Williams, \$5,044
Judith M. McPhee, \$5,000	Lois J. Winters, \$5,484

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October 4, 2004

Chair, Select Committee on Pension Policy

Subject: The Rehire Waiting Period Provision of the draft RCW 41.32.570

The purpose of this letter is to provide input concerning the revision of RCW 41.32.570. Further refinement of the waiting period provision by the SCPP is suggested as presented below.

Revised language (see subsection (3) of version "E" of the draft legislation) has provided an exception (one and one-half months) will ensure that retiring teachers that complete their employment contract prior to June 30 will have access to being rehired for the next full school year without penalty. However, the provision still excludes the retiring teachers that can not complete their employment contract prior to June 30. Their accrual date is August 1; and therefore, they would have to accept the 5.5 % per day penalty if employed prior to August 30. It should be noted that most school districts require work days in August in preparation for the start of the school year.

Consideration should be given to including provisions in the recommended legislation that will statutorily allow all retiring teachers to have equal access to the full year rehired process.

Inserting language within subsection (1) & (3), as indicated below, would do this.

Add a new subsection (1)(b) that reads: (1)(b) The one calendar month waiting period specified in subsection (1)(a) of this section may be reduced to one half of a calendar month if the retiring teacher has completed all contracted service in the school year in which retirement occurs.

(3) Any retired administrator who enters service in any public educational institution in Washington state one and one-half calendar months or more after his or her accrual date; or any teacher who enters similar service one-half of a month after the accrual date, and:  
(a) Is hired pursuant to a written policy ...

The teacher who is required to complete the school year in July because of contracted service should have the same access to the rehired process as does the retiring TRS 1 teacher who completes contracted service in June. The trade off is that the one half month waiting period would apply to all retiring teachers, but not administrators, and the one half month period would not apply unless the teacher completes the school year.

This is a fairness and equality policy issue. If a provision can be made to accommodate some retiring TRS 1 teachers, than the provision should ensure that all of the TRS 1 teachers who complete their employment contract are also included.

Thank you for taking the time to review this matter which deserves current attention by the SCPP.



Bobby J Woolley

October 1, 2004

Members, Select Committee on Pension Policy

Subject: Revision of RCW 41.32.570

The purpose of this letter is to provide written testimony to the SCPP concerning revision of RCW 41.32.570. The issue is the clarification of the term school year. The original language that was adopted in 2001 utilized the term school year to describe the period to which the 1500-hour limitation applies. Version "E" of the 2004 draft legislation (that is being currently considered) continues to use the term school year in reference to the 1500-hour provision.

DRS currently considers that this reference to school year is meant to mean the same twelve-month period as its fiscal year. The result is that WAC 415-112-541, which implements RCW 41.32.570, applies the 1500-hour limitation on the basis of DRS's fiscal year, not the State's school year. This confusion arises because the school year is not defined in WAC 41.32.010 (Definitions), nor in WAC 41.32.570 or the current draft legislation.

It should be further noted that DRS is currently in the process of revising WAC 415-112-541. In doing so, the Department has proposed language that continues to apply the 1500-hour limitation provision on the basis of its fiscal year. This DRS perspective ignores the specific statutory language. Certainly clarifying legislative intent as to the correct twelve-month period is merited; and should not be overlooked during the current SCPP considerations.

It is suggested that clarification should be provided in the SCPP's recommended revision of RCW 41.32.570. This can be done by adding a clarifying reference to the statutory definition of school year as contained in RCW 28A.150.040. This same format has also been utilized in RCW 41.32.013 to describe the school year as an annual period. The following wording could be inserted into the draft rehire legislation as indicated below.

See Draft Version "E", Section 3, RCW 41.32.570 (2003 C295 s 6),  
next to last line of subsection (3)(d):

..."after the retiree has rendered service for more  
than one thousand five hundred hours in a school year,  
as defined in RCW 28A.150.040. The cumulative total" ...

I will be available to provide additional information during the verbal testimony during the SCPP's October 19, 2004 meeting. Thank you for reviewing and acting on this request.



Bobby J Woolley

1       AN ACT Relating to the public employment of retirees from the  
2 teachers' retirement system and the public employees' retirement  
3 system; amending RCW 41.32.010, 41.32.055, 41.32.570, 41.40.010,  
4 41.40.010, and 41.40.037; reenacting and amending RCW 41.40.037;  
5 prescribing penalties; providing effective dates; and providing an  
6 expiration date.

7       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8       **Sec. 1.** RCW 41.32.010 and 2003 c 31 s 1 are each amended to read  
9 as follows:

10       As used in this chapter, unless a different meaning is plainly  
11 required by the context:

12       (1)(a) "Accumulated contributions" for plan 1 members, means the  
13 sum of all regular annuity contributions and, except for the purpose of  
14 withdrawal at the time of retirement, any amount paid under RCW  
15 41.50.165(2) with regular interest thereon.

16       (b) "Accumulated contributions" for plan 2 members, means the sum  
17 of all contributions standing to the credit of a member in the member's  
18 individual account, including any amount paid under RCW 41.50.165(2),  
19 together with the regular interest thereon.

1 (2) "Actuarial equivalent" means a benefit of equal value when  
2 computed upon the basis of such mortality tables and regulations as  
3 shall be adopted by the director and regular interest.

4 (3) "Annuity" means the moneys payable per year during life by  
5 reason of accumulated contributions of a member.

6 (4) "Member reserve" means the fund in which all of the accumulated  
7 contributions of members are held.

8 (5)(a) "Beneficiary" for plan 1 members, means any person in  
9 receipt of a retirement allowance or other benefit provided by this  
10 chapter.

11 (b) "Beneficiary" for plan 2 and plan 3 members, means any person  
12 in receipt of a retirement allowance or other benefit provided by this  
13 chapter resulting from service rendered to an employer by another  
14 person.

15 (6) "Contract" means any agreement for service and compensation  
16 between a member and an employer.

17 (7) "Creditable service" means membership service plus prior  
18 service for which credit is allowable. This subsection shall apply  
19 only to plan 1 members.

20 (8) "Dependent" means receiving one-half or more of support from a  
21 member.

22 (9) "Disability allowance" means monthly payments during  
23 disability. This subsection shall apply only to plan 1 members.

24 (10)(a) "Earnable compensation" for plan 1 members, means:

25 (i) All salaries and wages paid by an employer to an employee  
26 member of the retirement system for personal services rendered during  
27 a fiscal year. In all cases where compensation includes maintenance  
28 the employer shall fix the value of that part of the compensation not  
29 paid in money.

30 (ii) For an employee member of the retirement system teaching in an  
31 extended school year program, two consecutive extended school years, as  
32 defined by the employer school district, may be used as the annual  
33 period for determining earnable compensation in lieu of the two fiscal  
34 years.

35 (iii) "Earnable compensation" for plan 1 members also includes the  
36 following actual or imputed payments, which are not paid for personal  
37 services:

1 (A) Retroactive payments to an individual by an employer on  
2 reinstatement of the employee in a position, or payments by an employer  
3 to an individual in lieu of reinstatement in a position which are  
4 awarded or granted as the equivalent of the salary or wages which the  
5 individual would have earned during a payroll period shall be  
6 considered earnable compensation and the individual shall receive the  
7 equivalent service credit.

8 (B) If a leave of absence, without pay, is taken by a member for  
9 the purpose of serving as a member of the state legislature, and such  
10 member has served in the legislature five or more years, the salary  
11 which would have been received for the position from which the leave of  
12 absence was taken shall be considered as compensation earnable if the  
13 employee's contribution thereon is paid by the employee. In addition,  
14 where a member has been a member of the state legislature for five or  
15 more years, earnable compensation for the member's two highest  
16 compensated consecutive years of service shall include a sum not to  
17 exceed thirty-six hundred dollars for each of such two consecutive  
18 years, regardless of whether or not legislative service was rendered  
19 during those two years.

20 (iv) For members employed less than full time under written  
21 contract with a school district, or community college district, in an  
22 instructional position, for which the member receives service credit of  
23 less than one year in all of the years used to determine the earnable  
24 compensation used for computing benefits due under RCW 41.32.497,  
25 41.32.498, and 41.32.520, the member may elect to have earnable  
26 compensation defined as provided in RCW 41.32.345. For the purposes of  
27 this subsection, the term "instructional position" means a position in  
28 which more than seventy-five percent of the member's time is spent as  
29 a classroom instructor (including office hours), a librarian, or a  
30 counselor. Earnable compensation shall be so defined only for the  
31 purpose of the calculation of retirement benefits and only as necessary  
32 to insure that members who receive fractional service credit under RCW  
33 41.32.270 receive benefits proportional to those received by members  
34 who have received full-time service credit.

35 (v) "Earnable compensation" does not include:

36 (A) Remuneration for unused sick leave authorized under RCW  
37 41.04.340, 28A.400.210, or 28A.310.490;

1 (B) Remuneration for unused annual leave in excess of thirty days  
2 as authorized by RCW 43.01.044 and 43.01.041.

3 (b) "Earnable compensation" for plan 2 and plan 3 members, means  
4 salaries or wages earned by a member during a payroll period for  
5 personal services, including overtime payments, and shall include wages  
6 and salaries deferred under provisions established pursuant to sections  
7 403(b), 414(h), and 457 of the United States Internal Revenue Code, but  
8 shall exclude lump sum payments for deferred annual sick leave, unused  
9 accumulated vacation, unused accumulated annual leave, or any form of  
10 severance pay.

11 "Earnable compensation" for plan 2 and plan 3 members also includes  
12 the following actual or imputed payments which, except in the case of  
13 (b)(ii)(B) of this subsection, are not paid for personal services:

14 (i) Retroactive payments to an individual by an employer on  
15 reinstatement of the employee in a position or payments by an employer  
16 to an individual in lieu of reinstatement in a position which are  
17 awarded or granted as the equivalent of the salary or wages which the  
18 individual would have earned during a payroll period shall be  
19 considered earnable compensation, to the extent provided above, and the  
20 individual shall receive the equivalent service credit.

21 (ii) In any year in which a member serves in the legislature the  
22 member shall have the option of having such member's earnable  
23 compensation be the greater of:

24 (A) The earnable compensation the member would have received had  
25 such member not served in the legislature; or

26 (B) Such member's actual earnable compensation received for  
27 teaching and legislative service combined. Any additional  
28 contributions to the retirement system required because compensation  
29 earnable under (b)(ii)(A) of this subsection is greater than  
30 compensation earnable under (b)(ii)(B) of this subsection shall be paid  
31 by the member for both member and employer contributions.

32 (11) "Employer" means the state of Washington, the school district,  
33 or any agency of the state of Washington by which the member is paid.

34 (12) "Fiscal year" means a year which begins July 1st and ends June  
35 30th of the following year.

36 (13) "Former state fund" means the state retirement fund in  
37 operation for teachers under chapter 187, Laws of 1923, as amended.

1       (14) "Local fund" means any of the local retirement funds for  
2 teachers operated in any school district in accordance with the  
3 provisions of chapter 163, Laws of 1917 as amended.

4       (15) "Member" means any teacher included in the membership of the  
5 retirement system. Also, any other employee of the public schools who,  
6 on July 1, 1947, had not elected to be exempt from membership and who,  
7 prior to that date, had by an authorized payroll deduction, contributed  
8 to the member reserve.

9       (16) "Membership service" means service rendered subsequent to the  
10 first day of eligibility of a person to membership in the retirement  
11 system: PROVIDED, That where a member is employed by two or more  
12 employers the individual shall receive no more than one service credit  
13 month during any calendar month in which multiple service is rendered.  
14 The provisions of this subsection shall apply only to plan 1 members.

15       (17) "Pension" means the moneys payable per year during life from  
16 the pension reserve.

17       (18) "Pension reserve" is a fund in which shall be accumulated an  
18 actuarial reserve adequate to meet present and future pension  
19 liabilities of the system and from which all pension obligations are to  
20 be paid.

21       (19) "Prior service" means service rendered prior to the first date  
22 of eligibility to membership in the retirement system for which credit  
23 is allowable. The provisions of this subsection shall apply only to  
24 plan 1 members.

25       (20) "Prior service contributions" means contributions made by a  
26 member to secure credit for prior service. The provisions of this  
27 subsection shall apply only to plan 1 members.

28       (21) "Public school" means any institution or activity operated by  
29 the state of Washington or any instrumentality or political subdivision  
30 thereof employing teachers, except the University of Washington and  
31 Washington State University.

32       (22) "Regular contributions" means the amounts required to be  
33 deducted from the compensation of a member and credited to the member's  
34 individual account in the member reserve. This subsection shall apply  
35 only to plan 1 members.

36       (23) "Regular interest" means such rate as the director may  
37 determine.

1 (24)(a) "Retirement allowance" for plan 1 members, means monthly  
2 payments based on the sum of annuity and pension, or any optional  
3 benefits payable in lieu thereof.

4 (b) "Retirement allowance" for plan 2 and plan 3 members, means  
5 monthly payments to a retiree or beneficiary as provided in this  
6 chapter.

7 (25) "Retirement system" means the Washington state teachers'  
8 retirement system.

9 (26)(a) "Service" for plan 1 members means the time during which a  
10 member has been employed by an employer for compensation.

11 (i) If a member is employed by two or more employers the individual  
12 shall receive no more than one service credit month during any calendar  
13 month in which multiple service is rendered.

14 (ii) As authorized by RCW 28A.400.300, up to forty-five days of  
15 sick leave may be creditable as service solely for the purpose of  
16 determining eligibility to retire under RCW 41.32.470.

17 (iii) As authorized in RCW 41.32.065, service earned in an out-of-  
18 state retirement system that covers teachers in public schools may be  
19 applied solely for the purpose of determining eligibility to retire  
20 under RCW 41.32.470.

21 (b) "Service" for plan 2 and plan 3 members, means periods of  
22 employment by a member for one or more employers for which earnable  
23 compensation is earned subject to the following conditions:

24 (i) A member employed in an eligible position or as a substitute  
25 shall receive one service credit month for each month of September  
26 through August of the following year if he or she earns earnable  
27 compensation for eight hundred ten or more hours during that period and  
28 is employed during nine of those months, except that a member may not  
29 receive credit for any period prior to the member's employment in an  
30 eligible position except as provided in RCW 41.32.812 and 41.50.132;

31 (ii) If a member is employed either in an eligible position or as  
32 a substitute teacher for nine months of the twelve month period between  
33 September through August of the following year but earns earnable  
34 compensation for less than eight hundred ten hours but for at least six  
35 hundred thirty hours, he or she will receive one-half of a service  
36 credit month for each month of the twelve month period;

37 (iii) All other members in an eligible position or as a substitute  
38 teacher shall receive service credit as follows:



1 (A) A service credit month is earned in those calendar months where  
2 earnable compensation is earned for ninety or more hours;

3 (B) A half-service credit month is earned in those calendar months  
4 where earnable compensation is earned for at least seventy hours but  
5 less than ninety hours; and

6 (C) A quarter-service credit month is earned in those calendar  
7 months where earnable compensation is earned for less than seventy  
8 hours.

9 (iv) Any person who is a member of the teachers' retirement system  
10 and who is elected or appointed to a state elective position may  
11 continue to be a member of the retirement system and continue to  
12 receive a service credit month for each of the months in a state  
13 elective position by making the required member contributions.

14 (v) When an individual is employed by two or more employers the  
15 individual shall only receive one month's service credit during any  
16 calendar month in which multiple service for ninety or more hours is  
17 rendered.

18 (vi) As authorized by RCW 28A.400.300, up to forty-five days of  
19 sick leave may be creditable as service solely for the purpose of  
20 determining eligibility to retire under RCW 41.32.470. For purposes of  
21 plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal  
22 to two service credit months. Use of less than forty-five days of sick  
23 leave is creditable as allowed under this subsection as follows:

24 (A) Less than eleven days equals one-quarter service credit month;

25 (B) Eleven or more days but less than twenty-two days equals one-  
26 half service credit month;

27 (C) Twenty-two days equals one service credit month;

28 (D) More than twenty-two days but less than thirty-three days  
29 equals one and one-quarter service credit month;

30 (E) Thirty-three or more days but less than forty-five days equals  
31 one and one-half service credit month.

32 (vii) As authorized in RCW 41.32.065, service earned in an out-of-  
33 state retirement system that covers teachers in public schools may be  
34 applied solely for the purpose of determining eligibility to retire  
35 under RCW 41.32.470.

36 (viii) The department shall adopt rules implementing this  
37 subsection.

1 (27) "Service credit year" means an accumulation of months of  
2 service credit which is equal to one when divided by twelve.

3 (28) "Service credit month" means a full service credit month or an  
4 accumulation of partial service credit months that are equal to one.

5 (29) "Teacher" means any person qualified to teach who is engaged  
6 by a public school in an instructional, administrative, or supervisory  
7 capacity. The term includes state, educational service district, and  
8 school district superintendents and their assistants and all employees  
9 certificated by the superintendent of public instruction; and in  
10 addition thereto any full time school doctor who is employed by a  
11 public school and renders service of an instructional or educational  
12 nature.

13 (30) "Average final compensation" for plan 2 and plan 3 members,  
14 means the member's average earnable compensation of the highest  
15 consecutive sixty service credit months prior to such member's  
16 retirement, termination, or death. Periods constituting authorized  
17 leaves of absence may not be used in the calculation of average final  
18 compensation except under RCW 41.32.810(2).

19 (31) "Retiree" means any person who has begun accruing a retirement  
20 allowance or other benefit provided by this chapter resulting from  
21 service rendered to an employer while a member.

22 (32) "Department" means the department of retirement systems  
23 created in chapter 41.50 RCW.

24 (33) "Director" means the director of the department.

25 (34) "State elective position" means any position held by any  
26 person elected or appointed to statewide office or elected or appointed  
27 as a member of the legislature.

28 (35) "State actuary" or "actuary" means the person appointed  
29 pursuant to RCW 44.44.010(2).

30 (36) "Substitute teacher" means:

31 (a) A teacher who is hired by an employer to work as a temporary  
32 teacher, except for teachers who are annual contract employees of an  
33 employer and are guaranteed a minimum number of hours; or

34 (b) Teachers who either (i) work in ineligible positions for more  
35 than one employer or (ii) work in an ineligible position or positions  
36 together with an eligible position.

37 (37)(a) "Eligible position" for plan 2 members from June 7, 1990,

1 through September 1, 1991, means a position which normally requires two  
2 or more uninterrupted months of creditable service during September  
3 through August of the following year.

4 (b) "Eligible position" for plan 2 and plan 3 on and after  
5 September 1, 1991, means a position that, as defined by the employer,  
6 normally requires five or more months of at least seventy hours of  
7 earnable compensation during September through August of the following  
8 year.

9 (c) For purposes of this chapter an employer shall not define  
10 "position" in such a manner that an employee's monthly work for that  
11 employer is divided into more than one position.

12 (d) The elected position of the superintendent of public  
13 instruction is an eligible position.

14 (38) "Plan 1" means the teachers' retirement system, plan 1  
15 providing the benefits and funding provisions covering persons who  
16 first became members of the system prior to October 1, 1977.

17 (39) "Plan 2" means the teachers' retirement system, plan 2  
18 providing the benefits and funding provisions covering persons who  
19 first became members of the system on and after October 1, 1977, and  
20 prior to July 1, 1996.

21 (40) "Plan 3" means the teachers' retirement system, plan 3  
22 providing the benefits and funding provisions covering persons who  
23 first become members of the system on and after July 1, 1996, or who  
24 transfer under RCW 41.32.817.

25 (41) "Index" means, for any calendar year, that year's annual  
26 average consumer price index, Seattle, Washington area, for urban wage  
27 earners and clerical workers, all items compiled by the bureau of labor  
28 statistics, United States department of labor.

29 (42) "Index A" means the index for the year prior to the  
30 determination of a postretirement adjustment.

31 (43) "Index B" means the index for the year prior to index A.

32 (44) "Index year" means the earliest calendar year in which the  
33 index is more than sixty percent of index A.

34 (45) "Adjustment ratio" means the value of index A divided by index  
35 B.

36 (46) "Annual increase" means, initially, fifty-nine cents per month  
37 per year of service which amount shall be increased each July 1st by  
38 three percent, rounded to the nearest cent.

1 (47) "Member account" or "member's account" for purposes of plan 3  
2 means the sum of the contributions and earnings on behalf of the member  
3 in the defined contribution portion of plan 3.

4 (48) "Separation from service or employment" occurs when a person  
5 has terminated all employment with an employer. Separation from  
6 service or employment does not occur, and if claimed by an employer or  
7 employee may be a violation of RCW 41.32.055, when an employee and  
8 employer have a written or oral agreement to resume employment with the  
9 same employer following termination. Mere expressions or inquiries  
10 about postretirement employment by an employer or employee that do not  
11 constitute a commitment to reemploy the employee after retirement are  
12 not an agreement under this subsection.

13 (49) "Employed" or "employee" means a person who is providing  
14 services for compensation to an employer, unless the person is free  
15 from the employer's direction and control over the performance of work.  
16 The department shall adopt rules and interpret this subsection  
17 consistent with common law.

18 **Sec. 2.** RCW 41.32.055 and 2003 c 53 s 218 are each amended to read  
19 as follows:

20 (1) Any person who shall knowingly make false statements or shall  
21 falsify or permit to be falsified any record or records of the  
22 retirement system, except under subsection (2) of this section, in any  
23 attempt to defraud such system as a result of such act, is guilty of a  
24 class B felony punishable according to chapter 9A.20 RCW.

25 (2) Any person who shall knowingly make false statements or shall  
26 falsify or permit to be falsified any record or records of the  
27 retirement systems related to a member's separation from service and  
28 qualification for a retirement allowance under RCW 41.32.480 in any  
29 attempt to defraud such system as a result of such act, is guilty of a  
30 gross misdemeanor.

31 **Sec. 3.** RCW 41.32.570 and 2003 c 295 s 6 are each amended to read  
32 as follows:

33 (1)(a) If a retiree enters employment with an employer sooner than  
34 one calendar month after his or her accrual date, the retiree's monthly  
35 retirement allowance will be reduced by five and one-half percent for

every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any monthly benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) Except under subsection (3) of this section, any retired teacher or retired administrator who enters service in any public educational institution in Washington state ((and who has satisfied the break in employment requirement of subsection (1) of this section)) at least one calendar month after his or her accrual date shall cease to receive pension payments while engaged in such service, after the retiree has rendered service for more than ((one thousand five hundred)) eight hundred sixty-seven hours in a school year.

(3) Any retired teacher or retired administrator who enters service in any public educational institution in Washington state one and one-half calendar months or more after his or her accrual date and:

(a) Is hired pursuant to a written policy into a position for which the school board has documented a justifiable need to hire a retiree into the position;

(b) Is hired through the established process for the position with the approval of the school board or other highest decision-making authority of the prospective employer;

(c) The employer retains records of the procedures followed and the decisions made in hiring the retired teacher or retired administrator and provides those records in the event of an audit; and

(d) The employee has not already rendered a cumulative total of more than three thousand one hundred sixty-five hours of service while receiving pension payments beyond an annual threshold of eight hundred sixty-seven hours;

shall cease to receive pension payments while engaged in that service after the retiree has rendered service for more than one thousand five hundred hours in a school year. The cumulative total limitations under this subsection apply prospectively after the effective date of this act.

(4) When a retired teacher or administrator renders service beyond

eight hundred sixty-seven hours, the department shall collect from the employer the applicable employer retirement contributions for the entire duration of the member's employment during that fiscal year.

~~((+3))~~ (5) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

~~((+4))~~ (6) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than ~~((five hundred twenty-five))~~ eight hundred sixty-seven hours per year without a reduction of his or her pension.

**Sec. 4.** RCW 41.40.010 and 2003 c 412 s 4 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the public employees' retirement system provided for in this chapter.

(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4)(a) "Employer" for plan 1 members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the term shall also include any labor guild, association, or organization the membership of a local lodge or division of which is comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.

(b) "Employer" for plan 2 and plan 3 members, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant

1 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August  
2 31, 2000, school districts and educational service districts will no  
3 longer be employers for the public employees' retirement system plan 2.

4 (5) "Member" means any employee included in the membership of the  
5 retirement system, as provided for in RCW 41.40.023. RCW 41.26.045  
6 does not prohibit a person otherwise eligible for membership in the  
7 retirement system from establishing such membership effective when he  
8 or she first entered an eligible position.

9 (6) "Original member" of this retirement system means:

10 (a) Any person who became a member of the system prior to April 1,  
11 1949;

12 (b) Any person who becomes a member through the admission of an  
13 employer into the retirement system on and after April 1, 1949, and  
14 prior to April 1, 1951;

15 (c) Any person who first becomes a member by securing employment  
16 with an employer prior to April 1, 1951, provided the member has  
17 rendered at least one or more years of service to any employer prior to  
18 October 1, 1947;

19 (d) Any person who first becomes a member through the admission of  
20 an employer into the retirement system on or after April 1, 1951,  
21 provided, such person has been in the regular employ of the employer  
22 for at least six months of the twelve-month period preceding the said  
23 admission date;

24 (e) Any member who has restored all contributions that may have  
25 been withdrawn as provided by RCW 41.40.150 and who on the effective  
26 date of the individual's retirement becomes entitled to be credited  
27 with ten years or more of membership service except that the provisions  
28 relating to the minimum amount of retirement allowance for the member  
29 upon retirement at age seventy as found in RCW 41.40.190(4) shall not  
30 apply to the member;

31 (f) Any member who has been a contributor under the system for two  
32 or more years and who has restored all contributions that may have been  
33 withdrawn as provided by RCW 41.40.150 and who on the effective date of  
34 the individual's retirement has rendered five or more years of service  
35 for the state or any political subdivision prior to the time of the  
36 admission of the employer into the system; except that the provisions  
37 relating to the minimum amount of retirement allowance for the member

1 upon retirement at age seventy as found in RCW 41.40.190(4) shall not  
2 apply to the member.

3 (7) "New member" means a person who becomes a member on or after  
4 April 1, 1949, except as otherwise provided in this section.

5 (8)(a) "Compensation earnable" for plan 1 members, means salaries  
6 or wages earned during a payroll period for personal services and where  
7 the compensation is not all paid in money, maintenance compensation  
8 shall be included upon the basis of the schedules established by the  
9 member's employer.

10 (i) "Compensation earnable" for plan 1 members also includes the  
11 following actual or imputed payments, which are not paid for personal  
12 services:

13 (A) Retroactive payments to an individual by an employer on  
14 reinstatement of the employee in a position, or payments by an employer  
15 to an individual in lieu of reinstatement in a position which are  
16 awarded or granted as the equivalent of the salary or wage which the  
17 individual would have earned during a payroll period shall be  
18 considered compensation earnable and the individual shall receive the  
19 equivalent service credit;

20 (B) If a leave of absence is taken by an individual for the purpose  
21 of serving in the state legislature, the salary which would have been  
22 received for the position from which the leave of absence was taken,  
23 shall be considered as compensation earnable if the employee's  
24 contribution is paid by the employee and the employer's contribution is  
25 paid by the employer or employee;

26 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and  
27 72.09.240;

28 (D) Compensation that a member would have received but for a  
29 disability occurring in the line of duty only as authorized by RCW  
30 41.40.038;

31 (E) Compensation that a member receives due to participation in the  
32 leave sharing program only as authorized by RCW 41.04.650 through  
33 41.04.670; and

34 (F) Compensation that a member receives for being in standby  
35 status. For the purposes of this section, a member is in standby  
36 status when not being paid for time actually worked and the employer  
37 requires the member to be prepared to report immediately for work, if  
38 the need arises, although the need may not arise.



(ii) "Compensation earnable" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a

1 disability occurring in the line of duty only as authorized by RCW  
2 41.40.038;

3 (v) Compensation that a member receives due to participation in the  
4 leave sharing program only as authorized by RCW 41.04.650 through  
5 41.04.670; and

6 (vi) Compensation that a member receives for being in standby  
7 status. For the purposes of this section, a member is in standby  
8 status when not being paid for time actually worked and the employer  
9 requires the member to be prepared to report immediately for work, if  
10 the need arises, although the need may not arise.

11 (9)(a) "Service" for plan 1 members, except as provided in RCW  
12 41.40.088, means periods of employment in an eligible position or  
13 positions for one or more employers rendered to any employer for which  
14 compensation is paid, and includes time spent in office as an elected  
15 or appointed official of an employer. Compensation earnable earned in  
16 full time work for seventy hours or more in any given calendar month  
17 shall constitute one service credit month except as provided in RCW  
18 41.40.088. Compensation earnable earned for less than seventy hours in  
19 any calendar month shall constitute one-quarter service credit month of  
20 service except as provided in RCW 41.40.088. Only service credit  
21 months and one-quarter service credit months shall be counted in the  
22 computation of any retirement allowance or other benefit provided for  
23 in this chapter. Any fraction of a year of service shall be taken into  
24 account in the computation of such retirement allowance or benefits.  
25 Time spent in standby status, whether compensated or not, is not  
26 service.

27 (i) Service by a state employee officially assigned by the state on  
28 a temporary basis to assist another public agency, shall be considered  
29 as service as a state employee: PROVIDED, That service to any other  
30 public agency shall not be considered service as a state employee if  
31 such service has been used to establish benefits in any other public  
32 retirement system.

33 (ii) An individual shall receive no more than a total of twelve  
34 service credit months of service during any calendar year. If an  
35 individual is employed in an eligible position by one or more employers  
36 the individual shall receive no more than one service credit month  
37 during any calendar month in which multiple service for seventy or more  
38 hours is rendered.

1 (iii) A school district employee may count up to forty-five days of  
2 sick leave as creditable service solely for the purpose of determining  
3 eligibility to retire under RCW 41.40.180 as authorized by RCW  
4 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW  
5 28A.400.300 is equal to two service credit months. Use of less than  
6 forty-five days of sick leave is creditable as allowed under this  
7 subsection as follows:

8 (A) Less than twenty-two days equals one-quarter service credit  
9 month;

10 (B) Twenty-two days equals one service credit month;

11 (C) More than twenty-two days but less than forty-five days equals  
12 one and one-quarter service credit month.

13 (b) "Service" for plan 2 and plan 3 members, means periods of  
14 employment by a member in an eligible position or positions for one or  
15 more employers for which compensation earnable is paid. Compensation  
16 earnable earned for ninety or more hours in any calendar month shall  
17 constitute one service credit month except as provided in RCW  
18 41.40.088. Compensation earnable earned for at least seventy hours but  
19 less than ninety hours in any calendar month shall constitute one-half  
20 service credit month of service. Compensation earnable earned for less  
21 than seventy hours in any calendar month shall constitute one-quarter  
22 service credit month of service. Time spent in standby status, whether  
23 compensated or not, is not service.

24 Any fraction of a year of service shall be taken into account in  
25 the computation of such retirement allowance or benefits.

26 (i) Service in any state elective position shall be deemed to be  
27 full time service, except that persons serving in state elective  
28 positions who are members of the Washington school employees'  
29 retirement system, teachers' retirement system, or law enforcement  
30 officers' and fire fighters' retirement system at the time of election  
31 or appointment to such position may elect to continue membership in the  
32 Washington school employees' retirement system, teachers' retirement  
33 system, or law enforcement officers' and fire fighters' retirement  
34 system.

35 (ii) A member shall receive a total of not more than twelve service  
36 credit months of service for such calendar year. If an individual is  
37 employed in an eligible position by one or more employers the

1 individual shall receive no more than one service credit month during  
2 any calendar month in which multiple service for ninety or more hours  
3 is rendered.

4 (iii) Up to forty-five days of sick leave may be creditable as  
5 service solely for the purpose of determining eligibility to retire  
6 under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of  
7 plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal  
8 to two service credit months. Use of less than forty-five days of sick  
9 leave is creditable as allowed under this subsection as follows:

10 (A) Less than eleven days equals one-quarter service credit month;

11 (B) Eleven or more days but less than twenty-two days equals one-  
12 half service credit month;

13 (C) Twenty-two days equals one service credit month;

14 (D) More than twenty-two days but less than thirty-three days  
15 equals one and one-quarter service credit month;

16 (E) Thirty-three or more days but less than forty-five days equals  
17 one and one-half service credit month.

18 (10) "Service credit year" means an accumulation of months of  
19 service credit which is equal to one when divided by twelve.

20 (11) "Service credit month" means a month or an accumulation of  
21 months of service credit which is equal to one.

22 (12) "Prior service" means all service of an original member  
23 rendered to any employer prior to October 1, 1947.

24 (13) "Membership service" means:

25 (a) All service rendered, as a member, after October 1, 1947;

26 (b) All service after October 1, 1947, to any employer prior to the  
27 time of its admission into the retirement system for which member and  
28 employer contributions, plus interest as required by RCW 41.50.125,  
29 have been paid under RCW 41.40.056 or 41.40.057;

30 (c) Service not to exceed six consecutive months of probationary  
31 service rendered after April 1, 1949, and prior to becoming a member,  
32 in the case of any member, upon payment in full by such member of the  
33 total amount of the employer's contribution to the retirement fund  
34 which would have been required under the law in effect when such  
35 probationary service was rendered if the member had been a member  
36 during such period, except that the amount of the employer's  
37 contribution shall be calculated by the director based on the first  
38 month's compensation earnable as a member;

1 (d) Service not to exceed six consecutive months of probationary  
2 service, rendered after October 1, 1947, and before April 1, 1949, and  
3 prior to becoming a member, in the case of any member, upon payment in  
4 full by such member of five percent of such member's salary during said  
5 period of probationary service, except that the amount of the  
6 employer's contribution shall be calculated by the director based on  
7 the first month's compensation earnable as a member.

8 (14)(a) "Beneficiary" for plan 1 members, means any person in  
9 receipt of a retirement allowance, pension or other benefit provided by  
10 this chapter.

11 (b) "Beneficiary" for plan 2 and plan 3 members, means any person  
12 in receipt of a retirement allowance or other benefit provided by this  
13 chapter resulting from service rendered to an employer by another  
14 person.

15 (15) "Regular interest" means such rate as the director may  
16 determine.

17 (16) "Accumulated contributions" means the sum of all contributions  
18 standing to the credit of a member in the member's individual account,  
19 including any amount paid under RCW 41.50.165(2), together with the  
20 regular interest thereon.

21 (17)(a) "Average final compensation" for plan 1 members, means the  
22 annual average of the greatest compensation earnable by a member during  
23 any consecutive two year period of service credit months for which  
24 service credit is allowed; or if the member has less than two years of  
25 service credit months then the annual average compensation earnable  
26 during the total years of service for which service credit is allowed.

27 (b) "Average final compensation" for plan 2 and plan 3 members,  
28 means the member's average compensation earnable of the highest  
29 consecutive sixty months of service credit months prior to such  
30 member's retirement, termination, or death. Periods constituting  
31 authorized leaves of absence may not be used in the calculation of  
32 average final compensation except under RCW 41.40.710(2).

33 (18) "Final compensation" means the annual rate of compensation  
34 earnable by a member at the time of termination of employment.

35 (19) "Annuity" means payments for life derived from accumulated  
36 contributions of a member. All annuities shall be paid in monthly  
37 installments.

1 (20) "Pension" means payments for life derived from contributions  
2 made by the employer. All pensions shall be paid in monthly  
3 installments.

4 (21) "Retirement allowance" means the sum of the annuity and the  
5 pension.

6 (22) "Employee" or "employed" means a person who is providing  
7 services for compensation to an employer, unless the person is free  
8 from the employer's direction and control over the performance of work.  
9 The department shall adopt rules and interpret this subsection  
10 consistent with common law.

11 (23) "Actuarial equivalent" means a benefit of equal value when  
12 computed upon the basis of such mortality and other tables as may be  
13 adopted by the director.

14 (24) "Retirement" means withdrawal from active service with a  
15 retirement allowance as provided by this chapter.

16 (25) "Eligible position" means:

17 (a) Any position that, as defined by the employer, normally  
18 requires five or more months of service a year for which regular  
19 compensation for at least seventy hours is earned by the occupant  
20 thereof. For purposes of this chapter an employer shall not define  
21 "position" in such a manner that an employee's monthly work for that  
22 employer is divided into more than one position;

23 (b) Any position occupied by an elected official or person  
24 appointed directly by the governor, or appointed by the chief justice  
25 of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which  
26 compensation is paid.

27 (26) "Ineligible position" means any position which does not  
28 conform with the requirements set forth in subsection (25) of this  
29 section.

30 (27) "Leave of absence" means the period of time a member is  
31 authorized by the employer to be absent from service without being  
32 separated from membership.

33 (28) "Totally incapacitated for duty" means total inability to  
34 perform the duties of a member's employment or office or any other work  
35 for which the member is qualified by training or experience.

36 (29) "Retiree" means any person who has begun accruing a retirement  
37 allowance or other benefit provided by this chapter resulting from  
38 service rendered to an employer while a member.

1 (30) "Director" means the director of the department.

2 (31) "State elective position" means any position held by any  
3 person elected or appointed to statewide office or elected or appointed  
4 as a member of the legislature.

5 (32) "State actuary" or "actuary" means the person appointed  
6 pursuant to RCW 44.44.010(2).

7 (33) "Plan 1" means the public employees' retirement system, plan  
8 1 providing the benefits and funding provisions covering persons who  
9 first became members of the system prior to October 1, 1977.

10 (34) "Plan 2" means the public employees' retirement system, plan  
11 2 providing the benefits and funding provisions covering persons who  
12 first became members of the system on and after October 1, 1977, and  
13 are not included in plan 3.

14 (35) "Plan 3" means the public employees' retirement system, plan  
15 3 providing the benefits and funding provisions covering persons who:

16 (a) First become a member on or after:

17 (i) March 1, 2002, and are employed by a state agency or institute  
18 of higher education and who did not choose to enter plan 2; or

19 (ii) September 1, 2002, and are employed by other than a state  
20 agency or institute of higher education and who did not choose to enter  
21 plan 2; or

22 (b) Transferred to plan 3 under RCW 41.40.795.

23 (36) "Index" means, for any calendar year, that year's annual  
24 average consumer price index, Seattle, Washington area, for urban wage  
25 earners and clerical workers, all items, compiled by the bureau of  
26 labor statistics, United States department of labor.

27 (37) "Index A" means the index for the year prior to the  
28 determination of a postretirement adjustment.

29 (38) "Index B" means the index for the year prior to index A.

30 (39) "Index year" means the earliest calendar year in which the  
31 index is more than sixty percent of index A.

32 (40) "Adjustment ratio" means the value of index A divided by index  
33 B.

34 (41) "Annual increase" means, initially, fifty-nine cents per month  
35 per year of service which amount shall be increased each July 1st by  
36 three percent, rounded to the nearest cent.

37 (42) "Separation from service" occurs when a person has terminated  
38 all employment with an employer. Separation from service or employment

1 does not occur, and if claimed by an employer or employee may be a  
2 violation of RCW 41.40.055, when an employee and employer have a  
3 written or oral agreement to resume employment with the same employer  
4 following termination. Mere expressions or inquiries about  
5 postretirement employment by an employer or employee that do not  
6 constitute a commitment to reemploy the employee after retirement are  
7 not an agreement under this subsection.

8 (43) "Member account" or "member's account" for purposes of plan 3  
9 means the sum of the contributions and earnings on behalf of the member  
10 in the defined contribution portion of plan 3.

11 **Sec. 5.** RCW 41.40.010 and 2004 c 242 s 53 are each amended to read  
12 as follows:

13 As used in this chapter, unless a different meaning is plainly  
14 required by the context:

15 (1) "Retirement system" means the public employees' retirement  
16 system provided for in this chapter.

17 (2) "Department" means the department of retirement systems created  
18 in chapter 41.50 RCW.

19 (3) "State treasurer" means the treasurer of the state of  
20 Washington.

21 (4)(a) "Employer" for plan 1 members, means every branch,  
22 department, agency, commission, board, and office of the state, any  
23 political subdivision or association of political subdivisions of the  
24 state admitted into the retirement system, and legal entities  
25 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the  
26 term shall also include any labor guild, association, or organization  
27 the membership of a local lodge or division of which is comprised of at  
28 least forty percent employees of an employer (other than such labor  
29 guild, association, or organization) within this chapter. The term may  
30 also include any city of the first class that has its own retirement  
31 system.

32 (b) "Employer" for plan 2 and plan 3 members, means every branch,  
33 department, agency, commission, board, and office of the state, and any  
34 political subdivision and municipal corporation of the state admitted  
35 into the retirement system, including public agencies created pursuant  
36 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August



1 31, 2000, school districts and educational service districts will no  
2 longer be employers for the public employees' retirement system plan 2.

3 (5) "Member" means any employee included in the membership of the  
4 retirement system, as provided for in RCW 41.40.023. RCW 41.26.045  
5 does not prohibit a person otherwise eligible for membership in the  
6 retirement system from establishing such membership effective when he  
7 or she first entered an eligible position.

8 (6) "Original member" of this retirement system means:

9 (a) Any person who became a member of the system prior to April 1,  
10 1949;

11 (b) Any person who becomes a member through the admission of an  
12 employer into the retirement system on and after April 1, 1949, and  
13 prior to April 1, 1951;

14 (c) Any person who first becomes a member by securing employment  
15 with an employer prior to April 1, 1951, provided the member has  
16 rendered at least one or more years of service to any employer prior to  
17 October 1, 1947;

18 (d) Any person who first becomes a member through the admission of  
19 an employer into the retirement system on or after April 1, 1951,  
20 provided, such person has been in the regular employ of the employer  
21 for at least six months of the twelve-month period preceding the said  
22 admission date;

23 (e) Any member who has restored all contributions that may have  
24 been withdrawn as provided by RCW 41.40.150 and who on the effective  
25 date of the individual's retirement becomes entitled to be credited  
26 with ten years or more of membership service except that the provisions  
27 relating to the minimum amount of retirement allowance for the member  
28 upon retirement at age seventy as found in RCW 41.40.190(4) shall not  
29 apply to the member;

30 (f) Any member who has been a contributor under the system for two  
31 or more years and who has restored all contributions that may have been  
32 withdrawn as provided by RCW 41.40.150 and who on the effective date of  
33 the individual's retirement has rendered five or more years of service  
34 for the state or any political subdivision prior to the time of the  
35 admission of the employer into the system; except that the provisions  
36 relating to the minimum amount of retirement allowance for the member  
37 upon retirement at age seventy as found in RCW 41.40.190(4) shall not  
38 apply to the member.

1       (7) "New member" means a person who becomes a member on or after  
2 April 1, 1949, except as otherwise provided in this section.

3       (8)(a) "Compensation earnable" for plan 1 members, means salaries  
4 or wages earned during a payroll period for personal services and where  
5 the compensation is not all paid in money, maintenance compensation  
6 shall be included upon the basis of the schedules established by the  
7 member's employer.

8       (i) "Compensation earnable" for plan 1 members also includes the  
9 following actual or imputed payments, which are not paid for personal  
10 services:

11       (A) Retroactive payments to an individual by an employer on  
12 reinstatement of the employee in a position, or payments by an employer  
13 to an individual in lieu of reinstatement in a position which are  
14 awarded or granted as the equivalent of the salary or wage which the  
15 individual would have earned during a payroll period shall be  
16 considered compensation earnable and the individual shall receive the  
17 equivalent service credit;

18       (B) If a leave of absence is taken by an individual for the purpose  
19 of serving in the state legislature, the salary which would have been  
20 received for the position from which the leave of absence was taken,  
21 shall be considered as compensation earnable if the employee's  
22 contribution is paid by the employee and the employer's contribution is  
23 paid by the employer or employee;

24       (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and  
25 72.09.240;

26       (D) Compensation that a member would have received but for a  
27 disability occurring in the line of duty only as authorized by RCW  
28 41.40.038;

29       (E) Compensation that a member receives due to participation in the  
30 leave sharing program only as authorized by RCW 41.04.650 through  
31 41.04.670; and

32       (F) Compensation that a member receives for being in standby  
33 status. For the purposes of this section, a member is in standby  
34 status when not being paid for time actually worked and the employer  
35 requires the member to be prepared to report immediately for work, if  
36 the need arises, although the need may not arise.

37       (ii) "Compensation earnable" does not include:

1 (A) Remuneration for unused sick leave authorized under RCW  
2 41.04.340, 28A.400.210, or 28A.310.490;

3 (B) Remuneration for unused annual leave in excess of thirty days  
4 as authorized by RCW 43.01.044 and 43.01.041.

5 (b) "Compensation earnable" for plan 2 and plan 3 members, means  
6 salaries or wages earned by a member during a payroll period for  
7 personal services, including overtime payments, and shall include wages  
8 and salaries deferred under provisions established pursuant to sections  
9 403(b), 414(h), and 457 of the United States Internal Revenue Code, but  
10 shall exclude nonmoney maintenance compensation and lump sum or other  
11 payments for deferred annual sick leave, unused accumulated vacation,  
12 unused accumulated annual leave, or any form of severance pay.

13 "Compensation earnable" for plan 2 and plan 3 members also includes  
14 the following actual or imputed payments, which are not paid for  
15 personal services:

16 (i) Retroactive payments to an individual by an employer on  
17 reinstatement of the employee in a position, or payments by an employer  
18 to an individual in lieu of reinstatement in a position which are  
19 awarded or granted as the equivalent of the salary or wage which the  
20 individual would have earned during a payroll period shall be  
21 considered compensation earnable to the extent provided above, and the  
22 individual shall receive the equivalent service credit;

23 (ii) In any year in which a member serves in the legislature, the  
24 member shall have the option of having such member's compensation  
25 earnable be the greater of:

26 (A) The compensation earnable the member would have received had  
27 such member not served in the legislature; or

28 (B) Such member's actual compensation earnable received for  
29 nonlegislative public employment and legislative service combined. Any  
30 additional contributions to the retirement system required because  
31 compensation earnable under (b)(ii)(A) of this subsection is greater  
32 than compensation earnable under (b)(ii)(B) of this subsection shall be  
33 paid by the member for both member and employer contributions;

34 (iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,  
35 and 72.09.240;

36 (iv) Compensation that a member would have received but for a  
37 disability occurring in the line of duty only as authorized by RCW  
38 41.40.038;

1 (v) Compensation that a member receives due to participation in the  
2 leave sharing program only as authorized by RCW 41.04.650 through  
3 41.04.670; and

4 (vi) Compensation that a member receives for being in standby  
5 status. For the purposes of this section, a member is in standby  
6 status when not being paid for time actually worked and the employer  
7 requires the member to be prepared to report immediately for work, if  
8 the need arises, although the need may not arise.

9 (9)(a) "Service" for plan 1 members, except as provided in RCW  
10 41.40.088, means periods of employment in an eligible position or  
11 positions for one or more employers rendered to any employer for which  
12 compensation is paid, and includes time spent in office as an elected  
13 or appointed official of an employer. Compensation earnable earned in  
14 full time work for seventy hours or more in any given calendar month  
15 shall constitute one service credit month except as provided in RCW  
16 41.40.088. Compensation earnable earned for less than seventy hours in  
17 any calendar month shall constitute one-quarter service credit month of  
18 service except as provided in RCW 41.40.088. Only service credit  
19 months and one-quarter service credit months shall be counted in the  
20 computation of any retirement allowance or other benefit provided for  
21 in this chapter. Any fraction of a year of service shall be taken into  
22 account in the computation of such retirement allowance or benefits.  
23 Time spent in standby status, whether compensated or not, is not  
24 service.

25 (i) Service by a state employee officially assigned by the state on  
26 a temporary basis to assist another public agency, shall be considered  
27 as service as a state employee: PROVIDED, That service to any other  
28 public agency shall not be considered service as a state employee if  
29 such service has been used to establish benefits in any other public  
30 retirement system.

31 (ii) An individual shall receive no more than a total of twelve  
32 service credit months of service during any calendar year. If an  
33 individual is employed in an eligible position by one or more employers  
34 the individual shall receive no more than one service credit month  
35 during any calendar month in which multiple service for seventy or more  
36 hours is rendered.

37 (iii) A school district employee may count up to forty-five days of  
38 sick leave as creditable service solely for the purpose of determining

1 eligibility to retire under RCW 41.40.180 as authorized by RCW  
2 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW  
3 28A.400.300 is equal to two service credit months. Use of less than  
4 forty-five days of sick leave is creditable as allowed under this  
5 subsection as follows:

6 (A) Less than twenty-two days equals one-quarter service credit  
7 month;

8 (B) Twenty-two days equals one service credit month;

9 (C) More than twenty-two days but less than forty-five days equals  
10 one and one-quarter service credit month.

11 (b) "Service" for plan 2 and plan 3 members, means periods of  
12 employment by a member in an eligible position or positions for one or  
13 more employers for which compensation earnable is paid. Compensation  
14 earnable earned for ninety or more hours in any calendar month shall  
15 constitute one service credit month except as provided in RCW  
16 41.40.088. Compensation earnable earned for at least seventy hours but  
17 less than ninety hours in any calendar month shall constitute one-half  
18 service credit month of service. Compensation earnable earned for less  
19 than seventy hours in any calendar month shall constitute one-quarter  
20 service credit month of service. Time spent in standby status, whether  
21 compensated or not, is not service.

22 Any fraction of a year of service shall be taken into account in  
23 the computation of such retirement allowance or benefits.

24 (i) Service in any state elective position shall be deemed to be  
25 full time service, except that persons serving in state elective  
26 positions who are members of the Washington school employees'  
27 retirement system, teachers' retirement system, public safety  
28 employees' retirement system, or law enforcement officers' and fire  
29 fighters' retirement system at the time of election or appointment to  
30 such position may elect to continue membership in the Washington school  
31 employees' retirement system, teachers' retirement system, public  
32 safety employees' retirement system, or law enforcement officers' and  
33 fire fighters' retirement system.

34 (ii) A member shall receive a total of not more than twelve service  
35 credit months of service for such calendar year. If an individual is  
36 employed in an eligible position by one or more employers the  
37 individual shall receive no more than one service credit month during

1 any calendar month in which multiple service for ninety or more hours  
2 is rendered.

3 (iii) Up to forty-five days of sick leave may be creditable as  
4 service solely for the purpose of determining eligibility to retire  
5 under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of  
6 plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal  
7 to two service credit months. Use of less than forty-five days of sick  
8 leave is creditable as allowed under this subsection as follows:

9 (A) Less than eleven days equals one-quarter service credit month;

10 (B) Eleven or more days but less than twenty-two days equals one-  
11 half service credit month;

12 (C) Twenty-two days equals one service credit month;

13 (D) More than twenty-two days but less than thirty-three days  
14 equals one and one-quarter service credit month;

15 (E) Thirty-three or more days but less than forty-five days equals  
16 one and one-half service credit month.

17 (10) "Service credit year" means an accumulation of months of  
18 service credit which is equal to one when divided by twelve.

19 (11) "Service credit month" means a month or an accumulation of  
20 months of service credit which is equal to one.

21 (12) "Prior service" means all service of an original member  
22 rendered to any employer prior to October 1, 1947.

23 (13) "Membership service" means:

24 (a) All service rendered, as a member, after October 1, 1947;

25 (b) All service after October 1, 1947, to any employer prior to the  
26 time of its admission into the retirement system for which member and  
27 employer contributions, plus interest as required by RCW 41.50.125,  
28 have been paid under RCW 41.40.056 or 41.40.057;

29 (c) Service not to exceed six consecutive months of probationary  
30 service rendered after April 1, 1949, and prior to becoming a member,  
31 in the case of any member, upon payment in full by such member of the  
32 total amount of the employer's contribution to the retirement fund  
33 which would have been required under the law in effect when such  
34 probationary service was rendered if the member had been a member  
35 during such period, except that the amount of the employer's  
36 contribution shall be calculated by the director based on the first  
37 month's compensation earnable as a member;

1 (d) Service not to exceed six consecutive months of probationary  
2 service, rendered after October 1, 1947, and before April 1, 1949, and  
3 prior to becoming a member, in the case of any member, upon payment in  
4 full by such member of five percent of such member's salary during said  
5 period of probationary service, except that the amount of the  
6 employer's contribution shall be calculated by the director based on  
7 the first month's compensation earnable as a member.

8 (14)(a) "Beneficiary" for plan 1 members, means any person in  
9 receipt of a retirement allowance, pension or other benefit provided by  
10 this chapter.

11 (b) "Beneficiary" for plan 2 and plan 3 members, means any person  
12 in receipt of a retirement allowance or other benefit provided by this  
13 chapter resulting from service rendered to an employer by another  
14 person.

15 (15) "Regular interest" means such rate as the director may  
16 determine.

17 (16) "Accumulated contributions" means the sum of all contributions  
18 standing to the credit of a member in the member's individual account,  
19 including any amount paid under RCW 41.50.165(2), together with the  
20 regular interest thereon.

21 (17)(a) "Average final compensation" for plan 1 members, means the  
22 annual average of the greatest compensation earnable by a member during  
23 any consecutive two year period of service credit months for which  
24 service credit is allowed; or if the member has less than two years of  
25 service credit months then the annual average compensation earnable  
26 during the total years of service for which service credit is allowed.

27 (b) "Average final compensation" for plan 2 and plan 3 members,  
28 means the member's average compensation earnable of the highest  
29 consecutive sixty months of service credit months prior to such  
30 member's retirement, termination, or death. Periods constituting  
31 authorized leaves of absence may not be used in the calculation of  
32 average final compensation except under RCW 41.40.710(2).

33 (18) "Final compensation" means the annual rate of compensation  
34 earnable by a member at the time of termination of employment.

35 (19) "Annuity" means payments for life derived from accumulated  
36 contributions of a member. All annuities shall be paid in monthly  
37 installments.

1       (20) "Pension" means payments for life derived from contributions  
2 made by the employer. All pensions shall be paid in monthly  
3 installments.

4       (21) "Retirement allowance" means the sum of the annuity and the  
5 pension.

6       (22) "Employee" or "employed" means a person who is providing  
7 services for compensation to an employer, unless the person is free  
8 from the employer's direction and control over the performance of work.  
9 The department shall adopt rules and interpret this subsection  
10 consistent with common law.

11       (23) "Actuarial equivalent" means a benefit of equal value when  
12 computed upon the basis of such mortality and other tables as may be  
13 adopted by the director.

14       (24) "Retirement" means withdrawal from active service with a  
15 retirement allowance as provided by this chapter.

16       (25) "Eligible position" means:

17       (a) Any position that, as defined by the employer, normally  
18 requires five or more months of service a year for which regular  
19 compensation for at least seventy hours is earned by the occupant  
20 thereof. For purposes of this chapter an employer shall not define  
21 "position" in such a manner that an employee's monthly work for that  
22 employer is divided into more than one position;

23       (b) Any position occupied by an elected official or person  
24 appointed directly by the governor, or appointed by the chief justice  
25 of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which  
26 compensation is paid.

27       (26) "Ineligible position" means any position which does not  
28 conform with the requirements set forth in subsection (25) of this  
29 section.

30       (27) "Leave of absence" means the period of time a member is  
31 authorized by the employer to be absent from service without being  
32 separated from membership.

33       (28) "Totally incapacitated for duty" means total inability to  
34 perform the duties of a member's employment or office or any other work  
35 for which the member is qualified by training or experience.

36       (29) "Retiree" means any person who has begun accruing a retirement  
37 allowance or other benefit provided by this chapter resulting from  
38 service rendered to an employer while a member.



1 (30) "Director" means the director of the department.

2 (31) "State elective position" means any position held by any  
3 person elected or appointed to statewide office or elected or appointed  
4 as a member of the legislature.

5 (32) "State actuary" or "actuary" means the person appointed  
6 pursuant to RCW 44.44.010(2).

7 (33) "Plan 1" means the public employees' retirement system, plan  
8 1 providing the benefits and funding provisions covering persons who  
9 first became members of the system prior to October 1, 1977.

10 (34) "Plan 2" means the public employees' retirement system, plan  
11 2 providing the benefits and funding provisions covering persons who  
12 first became members of the system on and after October 1, 1977, and  
13 are not included in plan 3.

14 (35) "Plan 3" means the public employees' retirement system, plan  
15 3 providing the benefits and funding provisions covering persons who:

16 (a) First become a member on or after:

17 (i) March 1, 2002, and are employed by a state agency or institute  
18 of higher education and who did not choose to enter plan 2; or

19 (ii) September 1, 2002, and are employed by other than a state  
20 agency or institute of higher education and who did not choose to enter  
21 plan 2; or

22 (b) Transferred to plan 3 under RCW 41.40.795.

23 (36) "Index" means, for any calendar year, that year's annual  
24 average consumer price index, Seattle, Washington area, for urban wage  
25 earners and clerical workers, all items, compiled by the bureau of  
26 labor statistics, United States department of labor.

27 (37) "Index A" means the index for the year prior to the  
28 determination of a postretirement adjustment.

29 (38) "Index B" means the index for the year prior to index A.

30 (39) "Index year" means the earliest calendar year in which the  
31 index is more than sixty percent of index A.

32 (40) "Adjustment ratio" means the value of index A divided by index  
33 B.

34 (41) "Annual increase" means, initially, fifty-nine cents per month  
35 per year of service which amount shall be increased each July 1st by  
36 three percent, rounded to the nearest cent.

37 (42) "Separation from service" occurs when a person has terminated  
38 all employment with an employer. Separation from service or employment

1 does not occur, and if claimed by an employer or employee may be a  
2 violation of RCW 41.40.055, when an employee and employer have a  
3 written or oral agreement to resume employment with the same employer  
4 following termination. Mere expressions or inquiries about  
5 postretirement employment by an employer or employee that do not  
6 constitute a commitment to reemploy the employee after retirement are  
7 not an agreement under this subsection.

8 (43) "Member account" or "member's account" for purposes of plan 3  
9 means the sum of the contributions and earnings on behalf of the member  
10 in the defined contribution portion of plan 3.

11 **Sec. 6.** RCW 41.40.037 and 2003 c 412 s 5 and 2003 c 295 s 7 are  
12 each reenacted and amended to read as follows:

13 (1)(a) If a retiree enters employment with an employer sooner than  
14 one calendar month after his or her accrual date, the retiree's monthly  
15 retirement allowance will be reduced by five and one-half percent for  
16 every eight hours worked during that month. This reduction will be  
17 applied each month until the retiree remains absent from employment  
18 with an employer for one full calendar month.

19 (b) The benefit reduction provided in (a) of this subsection will  
20 accrue for a maximum of one hundred sixty hours per month. Any benefit  
21 reduction over one hundred percent will be applied to the benefit the  
22 retiree is eligible to receive in subsequent months.

23 (2)(a) Except as provided in (b) of this subsection, a retiree from  
24 plan 1 who enters employment with an employer at least one calendar  
25 month after his or her accrual date may continue to receive pension  
26 payments while engaged in such service for up to eight hundred sixty-  
27 seven hours of service in a calendar year without a reduction of  
28 pension.

29 (b) A retiree from plan 1 who enters employment with an employer at  
30 least three calendar months after his or her accrual date and:

31 (i) Is hired pursuant to a written policy into a position for which  
32 the employer has documented a justifiable need to hire a retiree into  
33 the position;

34 (ii) Is hired through the established process for the position with  
35 the approval of: A school board for a school district; the chief  
36 executive officer of a state agency employer; the secretary of the  
37 senate for the senate; the chief clerk of the house of representatives

1 for the house of representatives; the secretary of the senate and the  
2 chief clerk of the house of representatives jointly for the joint  
3 legislative audit and review committee, the legislative transportation  
4 committee, the joint committee on pension policy, the legislative  
5 evaluation and accountability program, the legislative systems  
6 committee, and the statute law committee; or according to rules adopted  
7 for the rehiring of retired plan 1 members for a local government  
8 employer;

9 (iii) The employer retains records of the procedures followed and  
10 decisions made in hiring the retiree, and provides those records in the  
11 event of an audit; and

12 (iv) The employee has not already rendered a cumulative total of  
13 more than ~~((one thousand nine hundred))~~ three thousand one hundred  
14 sixty-five hours of service while in receipt of pension payments beyond  
15 an annual threshold of eight hundred sixty-seven hours;

16 shall cease to receive pension payments while engaged in that service  
17 after the retiree has rendered service for more than one thousand five  
18 hundred hours in a calendar year. The ~~((one thousand nine hundred~~  
19 ~~hour))~~ cumulative total limitations under this subsection ~~((applies))~~  
20 apply prospectively ~~((to those retiring after July 27, 2003, and~~  
21 ~~retroactively to those who retired prior to July 27, 2003, and shall be~~  
22 ~~calculated from the date of retirement))~~ after the effective date of  
23 this act. Hours beyond the annual threshold of eight hundred sixty-  
24 seven that have already been accrued by reemployed retirees prior to  
25 the effective date of this act shall not count toward the three  
26 thousand one hundred sixty-five hour cumulative total.

27 (c) When a plan 1 member renders service beyond eight hundred  
28 sixty-seven hours, the department shall collect from the employer the  
29 applicable employer retirement contributions for the entire duration of  
30 the member's employment during that calendar year.

31 (d) A retiree from plan 2 or plan 3 who has satisfied the break in  
32 employment requirement of subsection (1) of this section may work up to  
33 eight hundred sixty-seven hours in a calendar year in an eligible  
34 position, as defined in RCW 41.32.010, 41.35.010, or 41.40.010, or as  
35 a fire fighter or law enforcement officer, as defined in RCW 41.26.030,  
36 without suspension of his or her benefit.

37 (3) If the retiree opts to reestablish membership under RCW  
38 41.40.023(12), he or she terminates his or her retirement status and

1 becomes a member. Retirement benefits shall not accrue during the  
2 period of membership and the individual shall make contributions and  
3 receive membership credit. Such a member shall have the right to again  
4 retire if eligible in accordance with RCW 41.40.180. However, if the  
5 right to retire is exercised to become effective before the member has  
6 rendered two uninterrupted years of service, the retirement formula and  
7 survivor options the member had at the time of the member's previous  
8 retirement shall be reinstated.

9 (4) The department shall collect and provide the state actuary with  
10 information relevant to the use of this section for the select  
11 committee on pension policy.

12 (5) The legislature reserves the right to amend or repeal this  
13 section in the future and no member or beneficiary has a contractual  
14 right to be employed for more than five months in a calendar year  
15 without a reduction of his or her pension.

16 **Sec. 7.** RCW 41.40.037 and 2004 c 242 s 63 are each amended to read  
17 as follows:

18 (1)(a) If a retiree enters employment with an employer sooner than  
19 one calendar month after his or her accrual date, the retiree's monthly  
20 retirement allowance will be reduced by five and one-half percent for  
21 every eight hours worked during that month. This reduction will be  
22 applied each month until the retiree remains absent from employment  
23 with an employer for one full calendar month.

24 (b) The benefit reduction provided in (a) of this subsection will  
25 accrue for a maximum of one hundred sixty hours per month. Any benefit  
26 reduction over one hundred percent will be applied to the benefit the  
27 retiree is eligible to receive in subsequent months.

28 (2)(a) Except as provided in (b) of this subsection, a retiree from  
29 plan 1 who enters employment with an employer at least one calendar  
30 month after his or her accrual date may continue to receive pension  
31 payments while engaged in such service for up to eight hundred sixty-  
32 seven hours of service in a calendar year without a reduction of  
33 pension.

34 (b) A retiree from plan 1 who enters employment with an employer at  
35 least three calendar months after his or her accrual date and:

36 (i) Is hired into a position for which the employer has documented  
37 a justifiable need to hire a retiree into the position;

1 (ii) Is hired through the established process for the position with  
2 the approval of: A school board for a school district; the chief  
3 executive officer of a state agency employer; the secretary of the  
4 senate for the senate; the chief clerk of the house of representatives  
5 for the house of representatives; the secretary of the senate and the  
6 chief clerk of the house of representatives jointly for the joint  
7 legislative audit and review committee, the legislative transportation  
8 committee, the joint committee on pension policy, the legislative  
9 evaluation and accountability program, the legislative systems  
10 committee, and the statute law committee; or according to rules adopted  
11 for the rehiring of retired plan 1 members for a local government  
12 employer;

13 (iii) The employer retains records of the procedures followed and  
14 decisions made in hiring the retiree, and provides those records in the  
15 event of an audit; and

16 (iv) The employee has not already rendered a cumulative total of  
17 more than ~~((one thousand nine hundred))~~ three thousand one hundred  
18 sixty-five hours of service while in receipt of pension payments beyond  
19 an annual threshold of eight hundred sixty-seven hours;

20 shall cease to receive pension payments while engaged in that service  
21 after the retiree has rendered service for more than one thousand five  
22 hundred hours in a calendar year. The ~~((one thousand nine hundred~~  
23 ~~hour))~~ cumulative total limitations under this subsection ~~((applies))~~  
24 apply prospectively ~~((to those retiring after July 27, 2003, and~~  
25 ~~retroactively to those who retired prior to July 27, 2003, and shall be~~  
26 ~~calculated from the date of retirement))~~ after the effective date of  
27 this act. Hours beyond the annual threshold of eight hundred sixty-  
28 seven that have already been accrued by reemployed retirees prior to  
29 the effective date of this act shall not count toward the three  
30 thousand one hundred sixty-five hour cumulative total.

31 (c) When a plan 1 member renders service beyond eight hundred  
32 sixty-seven hours, the department shall collect from the employer the  
33 applicable employer retirement contributions for the entire duration of  
34 the member's employment during that calendar year.

35 (d) A retiree from plan 2 or plan 3 who has satisfied the break in  
36 employment requirement of subsection (1) of this section may work up to  
37 eight hundred sixty-seven hours in a calendar year in an eligible

1 position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or  
2 41.40.010, or as a fire fighter or law enforcement officer, as defined  
3 in RCW 41.26.030, without suspension of his or her benefit.

4 (3) If the retiree opts to reestablish membership under RCW  
5 41.40.023(12), he or she terminates his or her retirement status and  
6 becomes a member. Retirement benefits shall not accrue during the  
7 period of membership and the individual shall make contributions and  
8 receive membership credit. Such a member shall have the right to again  
9 retire if eligible in accordance with RCW 41.40.180. However, if the  
10 right to retire is exercised to become effective before the member has  
11 rendered two uninterrupted years of service, the retirement formula and  
12 survivor options the member had at the time of the member's previous  
13 retirement shall be reinstated.

14 (4) The department shall collect and provide the state actuary with  
15 information relevant to the use of this section for the select  
16 committee on pension policy.

17 (5) The legislature reserves the right to amend or repeal this  
18 section in the future and no member or beneficiary has a contractual  
19 right to be employed for more than five months in a calendar year  
20 without a reduction of his or her pension.

21 NEW SECTION. **Sec. 8.** Sections 1 through 4 and 6 of this act take  
22 effect January 1, 2006.

23 NEW SECTION. **Sec. 9.** Sections 5 and 7 of this act take effect  
24 July 1, 2006.

25 NEW SECTION. **Sec. 10.** Sections 4 and 6 of this act expire July 1,  
26 2006.

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# DRAFT FISCAL NOTE

REQUEST NO.

RESPONDING AGENCY:	CODE:	DATE:	BILL NUMBER:
Office of the State Actuary	035	10/5/04	Z-0157/05 / Z-0141/05

## SUMMARY OF BILL:

This bill impacts the Teachers' Retirement System (TRS) Plan 1 and the Public Employees' Retirement System (PERS) Plan 1. It adds the same general hiring qualifications to TRS 1 as currently exist for PERS 1 retirees who seek to work in excess of 867 hours annually. Those include a prohibition of any written or verbal agreement to return to work with the same employer. Under the legislation, a TRS 1 separation from service that is pursuant to such an agreement would be nullified and would constitute a potential misdemeanor violation of the statute entitled "Penalties for False Statements." Further, TRS 1 employers are subject to certain record-keeping requirements when they hire these retirees, including documentation of the need to hire the retirees and records of the actual hiring process. The language for these requirements largely tracks that of the existing PERS 1 statute.

The proposed draft also requires both PERS and TRS Plan 1 employers to hire retirees pursuant to a written policy. In the proposed legislation, the length of separation requirement (between retirement and re-employment) for working beyond 867 hours is specified for TRS 1 as 45 days (rather than the 90 days already in effect for PERS 1.) Also, this bill creates a new cumulative limit of 3165 hours worked over 867 for both plans (from no cumulative total limit in TRS 1 and from a 1900-hour cumulative total limit in PERS 1). The new cumulative limit starts anew as of the effective date of the bill, which is January 1, 2006. Finally, the contractual right to post-retirement employment in TRS 1 is expanded from 525 hours per year to 867 hours.

Effective Date: January 1, 2006.

## CURRENT SITUATION:

Generally, all retired members of PERS and TRS have a **waiting period** before they may return to employment. In most instances, the waiting period is thirty (30) days. If retirees return to work prior to completion of the waiting period, their benefits are effectively suspended due to mandatory reductions in the benefit amounts (5.5% for every eight hours worked during that month to a maximum of 160 hours in PERS, and 5.5% for every seven hours worked during the month to a maximum of 140 hours in TRS).

The PERS and TRS systems allow retirees to return to employment, but there are limits on the number of hours that may be worked without suspension of retirement benefits. The **hour limits** start over with each new calendar year and vary among the plans. For the Plans 1, retirees may work up to a limit of 1,500 hours without suspension of their pension benefits, however they are subject to limits on their **contractual** rights to return to work of 5 months in PERS 1 and 525 hours in TRS 1.

PERS 1 retirees are subject to more specific rules affecting waiting periods and hour limits. Those seeking to return to work for 1,500 hours are subject to a 90-day waiting period. Also, these employees are subject to a 1900-hour cumulative or "lifetime" limit on the number of hours that may be worked beyond 867 hours annually. Once the 1,900 hour limit is reached, PERS 1 retirees may work up to 867 hours in subsequent calendar years before their benefits are suspended. PERS 1 retirees are also subject to an amended definition of "separation from service" so that any written or verbal agreement to return to work with the same employer nullifies the separation and creates a potential violation of the statute entitled "Penalties for False Statements," RCW 41.40.55. Further, employers are subject to certain record-keeping requirements when they hire these retirees to work for 1,500 hours, including documentation of the need to hire the retirees and records of the actual hiring process.

#### **FISCAL IMPACT:**

The fiscal impact of this proposal to the affected retirement systems is indeterminate. During the 2003 interim, the Select Committee on Pension Policy studied this issue and recommended that a proposal to charge individual employers for the cost of the expansion of the post-retirement employment provisions be deferred until further data and study is available. Further data and study is not available at this time. Therefore, the cost of the original legislation and any modifications to that legislation is indeterminate at this time.